

EXPLANATORY STATEMENT

Select Legislative Instrument No. 114, 2014

Issued by authority of the Treasurer

Customs Act 1901

Excise Act 1901

Excise and Customs Laws Amendment (2014 Measures No. 1) Regulation 2014

Section 270 of the *Customs Act 1901* and section 164 of the *Excise Act 1901* each provide that the Governor-General may make regulations prescribing all matters required or permitted to be prescribed or as may be necessary or convenient to be prescribed to give effect to each Act. Section 163 of the *Customs Act 1901* and section 78 of the *Excise Act 1901* each provide that refunds, rebates and remissions of duty may be made in such circumstances as prescribed in the regulations made pursuant to each Act.

The purpose of the *Excise and Customs Laws Amendment (2014 Measures No. 1) Regulation 2014* (Regulation) is to allow for the refund of amounts of excise and excise-equivalent customs duty that were overpaid on aviation fuel, following the repeal of the carbon tax. The carbon tax was repealed by a number of Acts including the *Customs Tariff Amendment (Carbon Tax Repeal) Act 2014* and the *Excise Tariff Amendment (Carbon Tax Repeal) Act 2014* (Repeal Acts). Both of these Acts have retrospective effect from 1 July 2014.

The imposition of the carbon price on aviation fuel (gasoline and kerosene) was achieved by including a ‘carbon component rate’ in the rate of excise and excise-equivalent customs duty that applied to aviation fuel. The carbon tax was repealed from 1 July 2014. However the Repeal Acts did not receive the Royal Assent until after this date. As a result, amounts of excise and excise-equivalent customs duty paid on aviation fuel between 1 July 2014 and the Repeal Acts’ receipt of the Royal Assent included the ‘carbon component rate’.

The Regulation amends the *Customs Regulations 1926* and the *Excise Regulations 1925* to prescribe an additional circumstance for which an application for a refund may be made. This allows for the refund of amounts of overpaid duty attributable to the period between 1 July 2014 and the Repeal Acts’ receipt of the Royal Assent.

Details of the Regulation are set out in the [Attachment](#).

The *Customs Act 1901* and the *Excise Act 1901* do not specify any conditions that need to be met before the power to make the Regulation may be exercised.

No public consultation was undertaken in respect of the Regulation due to mechanical and administrative nature of the amendments. The Regulation was developed in

consultation with the Australian Customs and Border Protection Service and the Australian Taxation Office.

The Regulations commence on the later of the day after it is registered and the day on which the *Customs Tariff Amendment (Carbon Tax Repeal) Act 2014* and the *Excise Tariff Amendment (Carbon Tax Repeal) Act 2014* receive the Royal Assent. However, if the Repeal Acts do not commence, the Regulation does not commence.

Details of the Excise and Customs Laws Amendment (2014 Measures No. 1) Regulation 2014

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Excise and Customs Laws Amendment (2014 Measures No. 1) Regulation 2014* (Regulation).

Section 2 – Commencement

This section provides that Schedule 1 to the Regulation (amendments relating to customs duty) commences on the later of the day after it is registered and the day on which the *Customs Tariff Amendment (Carbon Tax Repeal) Act 2014* receives the Royal Assent.

This section also provides that Schedule 2 to the Regulation (amendments relating to excise duty) commences on the later of the day after it is registered and the day on which the *Excise Tariff Amendment (Carbon Tax Repeal) Act 2014* receives the Royal Assent.

However, neither Schedule commences if these Acts do not receive the Royal Assent.

Section 3 – Authority

This section provides that the Regulation is made under the *Customs Act 1901* and the *Excise Act 1901*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Amendments

Schedule 1 – amendments relating to customs duty

Item 1 of Schedule 1 amends the *Customs Regulations 1926* (Customs Regulations) to prescribe a new circumstance in which a refund, rebate or remission of customs duty may be made under regulation 126. The new circumstance in paragraph 126(1)(zc) of the Customs Regulations is where customs duty has been paid on goods, and the effect of the amendments made by the *Customs Tariff Amendment (Carbon Tax Repeal) Act 2014* is that customs duty is payable on the goods at a rate that is less than the rate which was applicable when the goods were entered for home consumption.

Item 2 of Schedule 1 amends regulation 128A of the Customs Regulations to insert subregulation 128A(2B) to provide that an application for a refund under paragraph

126(1)(zc) must be made no later than 12 months after the day on which the customs duty was paid. An application for the refund is required under the general application provisions in regulation 128 of the Customs Regulations.

Item 3 of Schedule 1 amends regulation 128B of the Customs Regulations to insert subregulation 128B(7A) to provide that the amount of the refund, rebate or remission is the amount of the duty paid that was not payable, following the amendments to the rates of customs duty on aviation fuel by the *Customs Tariff Amendment (Carbon Tax Repeal) Act 2014*.

Schedule 2 – amendments relating to excise duty

Item 1 of Schedule 2 amends the *Excise Regulations 1925* (Excise Regulations) to prescribe a new circumstance in which a refund, rebate or remission may be made under regulation 50. The new circumstance under paragraph 50(1)(zze) is where excise duty has been paid on goods, and the effect of the amendments made by the *Excise Tariff Amendment (Carbon Tax Repeal) Act 2014* is that excise duty is payable on the goods at a rate that is less than the rate which was applicable when the goods were entered for home consumption.

Item 2 of Schedule 2 inserts regulation 52E to provide that the amount of the remission, rebate or refund is the amount of the duty paid that was not payable, following the amendments to the rates of excise duty on aviation fuel by the *Excise Tariff Amendment (Carbon Tax Repeal) Act 2014*.

An application for a refund, rebate or remission under paragraph 50(1)(zze) is required under the general application provisions in regulations 51 and 52 of the Excise Regulations. Item 3 of Schedule 2 provides that an application for a refund under paragraph 50(1)(zze) must be made to the Commissioner of Taxation or an authorised officer within 12 months after the day on which the excise duty was paid.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Excise and Customs Laws Amendment (2014 Measures No. 1) Regulation 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Excise and Customs Laws Amendment (2014 Measures No. 1) Regulation 2014* (Regulation) amends the *Excise Regulations 1925* and the *Customs Regulations 1926* to allow for the refund amounts of excise and excise-equivalent customs duty that have been overpaid on aviation fuel, following repeal of the carbon tax.

The imposition of the carbon price on aviation fuel (gasoline and kerosene) was achieved by including a ‘carbon component rate’ in the rate of excise and excise-equivalent customs duty that applies to aviation fuel. The carbon tax was repealed from 1 July 2014. However the Repeal Acts did not receive the Royal Assent until after this date. As a result, amounts of excise and excise-equivalent customs duty paid on aviation fuel between 1 July 2014 and the Repeal Acts’ receipt of the Royal Assent included the ‘carbon component rate’.

The Regulation amends the *Customs Regulations 1926* and the *Excise Regulations 1925* to prescribe an additional circumstance for which an application for a refund may be made. This allows for the refund of amounts of overpaid duty attributable to the period between 1 July 2014 and the Repeal Acts’ receipt of the Royal Assent.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms. It is mechanical and administrative in nature to give effect to legislation.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.