EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Competition, Charities and Treasury

Excise Act 1901

Customs Act 1901

Excise and Customs Legislation Amendment (Streamlining Administration) Regulations 2024

Section 164 of the *Excise Act 1901* (Excise Act) and section 270 of the *Customs Act 1901* (Customs Act) provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to those Acts.

Section 78 of the Excise Act and section 163 of the Customs Act establish frameworks for remissions, rebates and refunds of excise and customs duty imposed under the *Excise Tariff Act 1921* and the *Customs Tariff Act 1995* respectively, in respect of goods generally or classes of goods. Both sections provide that regulations may provide for matters in relation to such remissions, rebates and refunds, including the amount, or the means of determining the amount, of any remission, rebate or refund and the manner in which approvals may be granted.

The purpose of the *Excise and Customs Legislation Amendment (Streamlining Administration) Regulations 2024* (the Regulations) is to amend the *Excise Regulation 2015* (Excise Regulation) and the *Customs Regulation 2015* (Customs Regulation) to:

- extend the 12-month time limit for certain excise refunds to a four-year time limit, and apply this new time limit to certain refund circumstances currently with no time limit;
- provide for the remission of duties otherwise payable in respect of "bunker" fuel used in certain shipping vessels undertaking domestic voyages;
- introduce a new refund circumstance for customs duties paid on certain petroleum-based oils to address double-taxation when these oils are used in further manufacturing;
- introduce a new refund circumstance with a standard formula for the refund of duty paid on fuels processed back into excisable fuel by vapour recovery units; and
- make certain amendments subject to the enactment of the *Excise and Customs Legislation Amendment (Streamlining Administration) Bill 2024* (the Amending Bill).

In 2021, the Department of Prime Minister and Cabinet's Deregulation Taskforce (the Taskforce) reviewed Australia's regulatory framework for excise and excise-equivalent customs duty. Amongst other things, the Taskforce identified several unnecessary regulatory burdens and double-taxation in the fuel industry, and found that refund timeframes between the excise and customs systems were misaligned and could lead to differential treatment for businesses in similar circumstances. On 29 March 2022, in the

context of the March 2022-23 Budget, the former Government announced a package of measures intended to provide deregulation benefits to fuel and alcohol producers, importers and distributors through streamlining the administration of fuel and alcohol excise and excise-equivalent customs goods. Two components of this package were delivered as Schedules 4 and 5 of the *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023.* On 9 May 2023, the Government announced in the context of the 2023-24 Budget that the start date of the remaining measures would be revised from 1 July 2023 to 1 July 2024. The Amending Bill delivers the remaining components not delivered by the Regulations.

Consultation on an exposure draft of the Regulations took place between 22 March and 5 April 2024. Submissions were supportive, and following consultation the application date of the new remission of duties otherwise payable in respect of "bunker" fuel used in shipping vessels was delayed from 1 July 2024 to 1 January 2025 to provide industry more time to change systems and processes.

The authorising Acts do not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). The Regulations are subject to disallowance under section 42 of the Legislation Act and will be repealed automatically by section 48A of that Act.

Part 2 of Schedule 1 commences on the later of the day after the instrument is registered on the Federal Register of Legislation and the day the Amending Bill (if enacted) commences. However, it does not commence at all if the Amending Bill is not enacted. Part 1 of Schedule 1 and the rest of the Regulations commence on the day after the instrument is registered.

Details and financial impacts of the Regulations are set out in Attachment A.

A Statement of Compatibility of Human Rights is at Attachment B.

Impact Analysis

The Office of Impact Analysis assessed that an Impact Analysis was unnecessary as the Regulations are minor or machinery in nature (OIA 44547). This means an Impact Analysis is not required.

ATTACHMENT A

Details of the *Excise and Customs Legislation Amendment (Streamlining Administration) Regulations 2024*

Section 1 – Name

This section provides that the name of the regulations is the *Excise and Customs Legislation Amendment (Streamlining Administration) Regulations 2024* ("Regulations").

Section 2 – Commencement

This section provides that Part 2 of the Schedule to the Regulations commences on the later of:

- the day after the instrument is registered on the Federal Register of Legislation; and
- the day the Excise and Customs Legislation Amendment (Streamlining Administration) Bill 2024 (the Amending Bill) (if enacted) commences. However, it does not commence at all if the Amending Bill is not enacted.

This Part contains amendments contingent on commencement of the Amending Bill.

The section otherwise provides that Part 1 of the Schedule, containing the main amendments, and the rest of the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *Customs Act 1901* (Customs Act) and the *Excise Act 1901* (Excise Act).

Section 4 – Schedules

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

Schedule

Amended refund circumstance to avoid double-taxation of petroleum-based lubricants

Item 1 of the Schedule to the Regulations amends the definition of "petrol" in the Customs Regulation to include certain ingredients used when manufacturing petroleum-based lubricants and greases. This will enable a refund of customs duty paid on these ingredients under an existing refund circumstance. Item 4 also makes targeted amendments to that circumstance to require relevant petrol returned to a licensed manufacturer under the Excise Act not be used and be subject to further manufacture or production.

Customs and excise duties are imposed on certain petroleum-based lubricants and greases to notionally fund the Product Stewardship for Oil scheme. This scheme pays grants to encourage the sustainable use and recycling of oils. Manufacturing some of these lubricants and greases requires the use of ingredients, such as petroleum-based oils, on

which duty has already been paid. Where the ingredients were produced or made in Australia, and consequently the duty paid was an excise duty, a refund is available under Item 7 of the table in subclause 1(1) of Schedule 1 to the Excise Regulation. However, where the goods were imported and the duty paid was a customs duty, no equivalent refund was available in the Customs Regulation. This created effective double-taxation on lubricants and greases made using these imported ingredients which could only be avoided through using significant administrative processes.

To address this, item 1 amends the definition of "petrol" in section 4 of the Customs Regulation. The definition currently includes:

- benzine, benzol, gasoline, naptha and pentane; and
- petroleum distillate, shale distillate and coal tar distillate if dutiable under the Customs Act.

This definition is amended to add specified tariff subitems described in the table below. These goods are all "excise-equivalent goods" listed in the table in clause 1 of Schedule 1 to the Customs Regulation. Section 5 of the Customs Regulation provides that references to tariff subheadings are references to subheadings in Schedule 3 to the *Customs Tariff Act 1995* (Customs Tariff Act).

Item 14 of the table in clause 1 of Schedule 6 to the Customs Regulation previously provided a refund circumstance where:

- duty has been paid on petrol;
- the petrol, in whole or part, was returned to a manufacturer licensed under the Excise Act; and
- the requirements in section 103 of the Customs Regulation are met.

Section 103 requires that applicants for this refund circumstance keep records that allow an officer to determine the volume of petrol returned and verify that duty has been paid on the petrol returned. An "officer", under section 4 of the Customs Act, is an officer of Customs and includes various persons including employees of the Department of Home Affairs and persons specifically authorised to perform the functions of an officer.

Item 4 also amends this item 14 refund circumstance to add requirements that the petrol:

- has not been used; and
- is subject to further manufacture or production.

This amendment ensures the refund circumstance targets double-taxation of duty by ensuring a customs duty refund is not available if the goods are merely returned to an excise-licensed place and on-sold without further manufacture or production resulting in the imposition of excise duty. Item 14, as amended, more closely reflects item 7 of the table in subclause 1(1) of Schedule 1 to the Excise Regulation except it does not apply where goods are destroyed.

The above means that items 1 and 4 of the Schedule to the Regulations create a refund circumstance in respect of petrol:

- that is either classified under the tariff subheadings set out below, or within the previous definition of petrol set out above;

- on which duty has been paid;
- that has not been used;
- that is, in whole or part, returned to a manufacturer licensed under the Excise Act; and
- that is subject to further manufacture or production.

Applicants must also still comply with the obligations under section 103 of the Customs Regulation.

Description of Customs tariff headings and subheadings added to the definition of "petrol"

Description		*Tariff Subitem*
2710: Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils		
Other:	Petroleum based oils, other than grease of 2710.19.92, including: • Lubricant base oils; • Prepared lubricant additives containing carrier oils; • Lubricants for engines, gear sets, pumps and bearings; • Hydraulic fluids; • Brake fluids; • Transmission oils; • Transformer and heat transfer oils	2710.19.91
	Petroleum based greases	2710.19.92
Waste oils containing polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs):Containing polychlorinated biphenyls (pcbs), polychlorinated terphenyls (pcts) or polybrominated biphenyls (pbbs)	Petroleum based oils, other than grease of 2710.91.92, including: • lubricant base oils; • prepared lubricant additives containing carrier oils; • lubricants for engines, gear sets, pumps and bearings; • hydraulic fluids; • brake fluids; • transmission oils; • transformer and heat transfer oils	2710.91.91
	Petroleum based greases	2710.91.92
Waste oils: other	Petroleum based oils, other than grease of 2710.99.92, including:	2710.99.91

Description		*Tariff Subitem*
	• lubricant base oils; • prepared lubricant additives containing carrier oils; • lubricants for engines, gear sets, pumps and bearings; • hydraulic fluids; • brake fluids; • transmission oils; • transformer and heat transfer oils	
	Petroleum based greases	2710.99.92
3403: Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anticorrosion preparations and mould release preparations, based on lubricants) and preparations of a kind used for the oil or grease treatment of textile materials, leather, furskins or other materials, excluding preparations containing, as basic constituents, 70% or more by weight of petroleum oils or of oils obtained from bituminous minerals:		
Containing petroleum oils or oils obtained from bituminous minerals: preparations for the treatment of textile materials, leather, furskins or other materials	In solid or semi-solid form	3403.11.10
	Other	3403.11.90
Containing petroleum oils or oils obtained from bituminous minerals: other	In solid or semi-solid form	3403.19.10
	Other	3403.19.90
Preparations for the treatment of textile materials, leather, furskins or other materials: other	In solid or semi-solid form	3403.91.10
	Other	3403.91.90
Other	In solid or semi-solid form	3403.99.10
	Other	3403.99.90
Anti-knock preparations, oxidation inhibitors, gum inhibitors, viscosity improvers, anti-corrosive preparations and other prepared additives, for mineral oils (including gasoline) or for other liquids used for the same purposes as mineral oils:		
Additives for lubricating oils	In solid or semi-solid form	3811.21.10
	Other	3811.21.90
Hydraulic brake fluids and other prepared liquids for hydraulic transmission, not containing or containing less than 70% by weight of petroleum oils or oils obtained from bituminous minerals		3819.00.00

New remission for "bunker" fuels

Context

"Bunker fuel" or "ship's bunkers" is the oil carried as fuel on oil-burning ships or the fuel that is stored to power the ship or auxiliary equipment, rather than as cargo. Previously, fuel consumed during commercial shipping voyages was generally duty-free but the mechanism depended on the type of voyage, the type of duty paid and from where the fuel was supplied.

Where fuel was supplied into a ship going on an international voyage:

- For fuel supplied directly from a licensed premise, excise or customs duty liability was and continues to be removed entirely at the time of supply under section 160A of the Excise Act and Part VII of the Customs Act respectively.

- For fuel on which excise duty was paid and that was supplied from an unlicensed site, an excise refund was immediately available under item 5 in the table in subclause 1(1) of Schedule 1 unless a fuel tax credit was available under the *Fuel Tax Act 2006* (Fuel Tax Act). No equivalent refund was available if customs duty was paid.

For fuel supplied into a ship going on a domestic voyage or in any other circumstances, duty was payable but the ship operator or their agent was generally entitled to claim fuel tax credits on their Business Activity Statement (BAS), provided they met the requirements imposed by the Fuel Tax Act and associated legislation and regulations. However, since the BAS is generally lodged and refunds paid on a monthly or quarterly cycle and given the proportion of shipping costs attributable to fuel, the requirement to pay upfront and claim a fuel tax credit later had significant cash flow impacts on businesses operating domestic voyages. Operators that ordinarily or exclusively service Australia were therefore put at significant commercial disadvantage. The different regulatory treatment also imposed administrative burdens and uncertainty working out what duty or refund applied.

Amendments

Items 5 and 16 in the Schedule to the Regulations amend the Customs Regulation and Excise Regulation respectively to create a new automatic remission of duty otherwise payable on bunker fuels in certain circumstances. Specifically:

- Item 5 creates a new item 22 in the table in clause 1 of Schedule 6 of the Customs Regulation, which contains circumstances in which refunds, rebates or remissions of customs duty can be made. Item 2 amends subsection 106(4) of the Customs Regulation to remove the requirement for an application in these circumstances.
- Item 16 inserts a new item in the table in subclause 2(1) of Schedule 1 to the Excise Regulation which specifies circumstances in which the CEO may remit excise duty without application (under section 4 of the Excise Act the "CEO" is the Commissioner of Taxation). An automatic remission removes the liability to pay duty arising at the point of manufacture in prescribed circumstances.

To ensure the remission is appropriately targeted, this new remission applies in respect of goods where all of the following are satisfied:

- excise or customs duty is payable on the goods, and the goods are classified under certain items in the Excise Tariff Act or clause 1 of Schedule 1 to the Customs Regulation respectively;
- the goods are supplied as ship's stores to a ship that is in effect not taking, or is not about to undertake, an international voyage;
- for excise duty, the goods are supplied from licensed premises;
- for customs duty, the fuel is for use in carrying on an enterprise, or for excise duty the fuel is supplied for that purpose; and
- the ship meets a minimum tonnage requirement.

Fuel classification requirement

Under paragraph (a) of both the new item 11 of the table in subclause 2(1) of Schedule 1 to the Excise Regulation, and item 22 of the table in clause 1 of Schedule 6 to the Customs Regulation, excise duty or customs duty must be payable on the goods.

Where the duty is an excise duty because the goods were manufactured or produced in Australia and are subject to the Excise Tariff Act, the goods must be classified under item 10 of the Schedule to that Act. Item 10 specifies fuels. However, subitems 10.6 and 10.17 are excluded. These subitems are gasoline and kerosene respectively for use as fuel in aircraft. This is intended to exclude from scope fuels supplied as ship's stores but used for powering auxiliary aircraft on board the ship, such as helicopters.

Where the duty is customs duty, the goods must be classified under one of the following items appearing in the table in clause 1 of Schedule 1 to the Customs Regulation:

- Item 39;
- Items 61 to 65;
- Items 67 to 72;
- Items 74 to 77;
- Items 80 to 83;
- Items 85 to 87;
- Items 89 to 92;
- Items 95 to 97;
- Items 99 to 101;
- Items 103 to 106;
- Items 109 to 118;
- Item 129; or
- Items 131 to 134.

The table in clause 1 of Schedule 1 to the Regulation identifies various goods, classified under Schedule 3 of the Customs Tariff Act, that are "excise-equivalent goods". This list of items mirrors goods classified under item 10 of the Schedule to the Excise Tariff Act. It also excludes fuels for use in aircraft.

Domestic ship's stores requirement

Under paragraphs (b) and (e) of both the respective remission items, the goods must be stores for the use of passengers or crew, or for the service, of a certain kind of ship. The effect of both paragraphs is that the fuel must be stores for the use of passengers or crew, or for the service, of a vessel used in navigation, other than air navigation, that is neither currently engaged in making a voyage between a place in Australia and a place outside Australia, nor about to engage in such a voyage.

Specifically, where the duty is a customs duty, paragraph (b) of new item 22 of the table in clause 1 of Schedule 6 to the Customs Regulation requires that the goods are stores for the use of passengers or crew of a ship or for the service of a ship. Paragraph (e) then requires that that ship not be a "ship" within the meaning of Part VII of the Customs Act. As clarified by a note under that paragraph, in that Part and specifically under section 130C, such a "ship" is one currently engaged in making international voyages and not about to make a voyage other than an international voyage. An "international voyage" means a voyage, whether direct or indirect, between a place in Australia and a place outside Australia. Part VII then generally exempts from duty goods used as ship's stores for these ships with certain conditions. Section 4 of the Customs Act otherwise defines a "ship" as any vessel used in navigation, other than air navigation, and includes an offshore industry mobile unit or a barge, lighter or any other floating vessel.

Where the duty is an excise duty, paragraph (b) of new item 11 in the table in subclause 2(1) of Schedule 1 similarly requires that the goods are stores for the use of passengers or crew of a ship or for the service of a ship. Paragraph (f) then requires that that ship not be an "overseas ship" within the meaning of the Excise Act. An "overseas ship" is a "ship" within the meaning of section 130C of the Customs Act, discussed above. Section 4 of the Excise Act also defines a "ship" as any vessel used in navigation, other than air navigation, and also includes a barge, lighter or any other floating vessel.

Licensed premises requirement

Where the duty is an excise duty, paragraph (c) of new item 11 in the table in subclause 2(1) of Schedule 1 to the Excise Regulation requires that the goods be supplied from premises covered by a licence granted under section 39A of the Excise Act. Since most bunker fuels for domestic voyages are supplied subject to excise duty, this requirement protects revenue by requiring the goods to be supplied under remission by persons subject to the extensive obligations required by the Excise Act of licence holders.

This requirement does not apply where the duty is a customs duty. This accommodates circumstances where a ship disconnects from an international voyage in Australia, to commence a domestic voyage, with fuel already on board the ship (that meets the other requirements) and that was supplied overseas.

Enterprise requirement

Where the duty is an excise duty, paragraph (d) of new item 11 in the relevant table in the Excise Regulation requires that the goods must have been supplied to a person for the purpose of carrying on an enterprise within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The phrases "carrying on" and "enterprise" are defined by sections 1951 and 920 of the GST Act respectively. This is principally intended

to ensure private or recreational purposes are excluded and reflects current entitlement rules for fuel tax credits (see specifically section 415 of the Fuel Tax Act).

Where the duty is a customs duty, the equivalent paragraph (c) of new item 22 in the relevant table in the Customs Regulation only requires that the goods be for that purpose. This reflects the intention, noted under the previous heading, that supply of relevant fuel is not a requirement of the new remission of customs duty.

Minimum tonnage requirement

Under paragraphs (e) and (d) of new items 11 and 22, respectively, the ship must have a gross tonnage of at least 400.

"Gross tonnage" has the same meaning as in the *Shipping Reform (Tax Incentives) Act 2012*, section 5 of which gives "gross tonnage" the same meaning as in the *International Convention on Tonnage Measurement of Ships* done in London on 23 June 1969, as amended and in force for Australia from time to time.

Simplifying refunds for fuel recovered by vapour recovery units under the Excise Act

Items 6, 10, 11 and 15 of the Regulations together:

- create a new exclusive refund circumstance for diesel and gasoline goods returned to a licensed site and processed by a vapour recovery unit; and
- specify a formula for calculating the amount of refund for this circumstance.

Context

Petrol ("gasoline" in the Schedule to the Excise Tariff Act) is volatile and gives off large amounts of vapour. When petrol is loaded from a fuel tanker into a storage tank at a service station, this vapour is captured and retained in the tanker to prevent leakage into the atmosphere. In practice, the vapour is collected in the empty barrel of the delivery tanker. Then, when the tanker returns to a fuel terminal licensed under the Excise Act, the vapour will typically be captured for processing in a vapour recovery unit and the vapour converted back into excisable liquid petrol.

This same practice occurs when the tanker transports diesel. However, since diesel gives off minimal vapour, in practice the vapour recovery unit recovers minimal to no excisable liquid diesel.

Previously, to avoid double-taxation of the recovered excisable liquids, a refund was claimed under item 7 of the table in subclause 1(1) of Schedule 1 to the Excise Regulation, on the basis that excisable fuel that was not used, was returned to premises for which a licence was granted under section 39A of the Excise Act and was subject to further manufacture or production. However, substantiating this required working out the actual volume of liquid fuel recovered, using a method agreed by industry and the Australian Taxation Office in 2002. In brief, this required bi-annual testing of each unit and the application of a complex formula. The frequent testing of vapour recovery units and the administrative burdens associated with these refunds were costly relative to the limited refund amounts.

New refund circumstance for excisable fuel goods recovered using vapour recovery units

Item 15 of the Regulations inserts a new refund circumstance as item 7A in the Excise Refund Circumstance Table in the Excise Regulation. This circumstance applies where:

- excise duty has been paid on goods that are gasoline, gasoline for use as fuel in aircraft, blends of gasoline and ethanol, diesel, or blends of diesel and either biodiesel or ethanol (subitems 10.5, 10.6, 10.7, 10.10 and 10.12 of the Schedule to the Excise Tariff Act);
- a quantity of the goods are returned to premises licensed under section 39A of the Excise Act; and
- the returned goods are processed by a vapour recovery unit at those premises.

"Vapour recovery unit" has its ordinary meaning.

Item 14 amends the current item 7 in the table in subclause 1(1) of Schedule 1 to the Excise Regulation so it does not apply when the new item 7A applies. This ensures that the new item 7A is the exclusive basis for a refund and the formula introduced by items 10 and 11 (discussed below) is used to determine the refund amount.

New method for determining the refund amount

Item 11 inserts a new subsection 12(4) into the Excise Regulation with a new method for working out the amount of refund for this circumstance. Specifically, a new item 1A is inserted into the table in subsection 12(2) of the Excise Regulation that provides the amount of refund payable in the new circumstance created by item 7A is the amount worked out using this new method in subsection 12(4).

This method has two steps.

First, the following two amounts are added:

- the duty that was paid on any quantity of gasoline, including for use as fuel in aircraft, and blends of gasoline and ethanol (subitems 10.5, 10.6 and 10.7 of the Schedule to the Excise Tariff Act); and
- the duty that was paid on so much of any quantity of diesel or blends of diesel and either biodiesel or ethanol (classified under subitems 10.10 and 10.12 of the Schedule to the Excise Tariff Act) that does not exceed twice the quantity of gasoline goods above.

Second, this sum is multiplied by 0.0006442. The result is the refund amount.

The 0.0006442 rate was determined by averaging returned vapour concentrations and vapour recovery unit efficiencies for 17 units across Australia. Using a single rate avoids the need to test units on a bi-annual basis and considerably simplifies the administration of associated refunds.

Including only so much of any quantity of diesel goods that does not exceed twice the quantity of gasoline goods effectively limits the refund a person can claim to a ratio of 2:1 diesel to gasoline. Quantities of diesel goods more than twice gasoline goods are disregarded.

This limit is imposed because, as noted, diesel gives off minimal vapour when loaded from a tanker and processed by a vapour recovery unit. The previous method for determining these refunds reflected this by requiring a taxpayer to measure a loading pattern of diesel to gasoline during each unit's testing period and then requiring them to manually adjust their refund whenever the actual loading pattern for the refund differed by more than 15 per cent. However, since the 0.0006442 rate is based on an average of units across Australia, there is no true loading pattern for this purpose. Instead, the 2:1 limit is a reasonable mechanism to balance administrative convenience with ensuring taxpayers cannot claim an amount of refund reflecting no actual excisable liquid.

Example 1 – Calculation of refund

A taxpayer applies for a refund of excise duty paid on 150,000 litres of diesel (subitem 10.10) and 100,000 litres of gasoline (subitem 10.5). The elements of the new item 7A circumstance are met. The refund amount will be the amount of duty that was paid on the 100,000 litres of gasoline plus the amount of duty paid on the 150,000 litres of diesel, multiplied by 0.0006442. The result is the refund amount under this new refund circumstance.

Example 2 – Calculation of refund application of 2:1 limit

A taxpayer applies for a refund of excise duty paid on 1,500,000 litres of diesel (subitem 10.10) and 100,000 litres of gasoline (subitem 10.5). The elements of new circumstance item 7A are met. Here, the 2:1 limit is applied to the diesel quantities as the actual ratio of diesel to gasoline is 15:1. The refund amount will only reflect duty paid on 200,000 litres of diesel and duty paid on the remaining 1,300,000 litres of diesel is disregarded for refund purposes. The amount of duty paid on 200,000 litres of diesel is added to the amount of duty paid on the 100,000 litres of gasoline, and this amount is multiplied by 0.0006442. The result is the refund amount under this new refund circumstance.

Extending certain refund time limits under the Excise Act

Items 6 to 9 of the Regulations extend the time period to make applications for various refunds of excise duty, not relating to tobacco products, from 12 months to four years, and apply this four-year timeframe to various circumstances that currently have no timeframe and for which the new four-year timeframe is more appropriate than a 12-month timeframe.

Extending existing refund timeframes

A person dealing in duty-paid excisable goods or goods subject to excise-equivalent customs duty may be eligible to claim refunds, rebates or remissions of duty in certain circumstances, subject to time limits. For excise duty, section 78 of the Excise Act provides for a framework for these to be specified in the Excise Regulation. This framework is in Part 2 and Schedule 1 to the Excise Regulation. A person dissatisfied with a decision about a remission, refund or rebate of excise duty can formally object to that decision under Part IVC of the *Taxation Administration Act 1953* (see paragraph 162C(1)(i) of the Excise Act) in addition to informal or external review rights available.

Section 10 and the table in subclause 1(1) of Schedule 1 together provide that a person may, in the circumstances in that table, apply to the CEO for a remission, rebate or refund in the manner set out in section 10 (for example, in the approved form).

Further, the table in section 11 of the Excise Regulation sets time limits for some of those circumstances by requiring an application in respect of a circumstance mentioned in the column headed "Circumstance", referring to items in the table in subclause 1(1) of Schedule 1, to be given to the CEO in the period mentioned in the column headed "Period for giving application". All the circumstances in this table in section 11 are refund or remission circumstances.

Previously, every period listed in the table was a 12-month period, although the start dates differed between circumstances. For example:

- the 12-month period for a refund under item 6 of the table in subclause 1(1) of Schedule 1, relating to goods affected by a by-law made under Part XV of the Excise Act, started when the relevant by-law was made;
- the 12-month period for refunds under item 9 or 10 of the table in subclause 1(1) of Schedule 1, which deal with stabilised crude petroleum oil and condensate produced in a financial year, started after the end of the financial year in which the excise was paid.

This 12-month period differed from the timeframe of four years that generally applies to equivalent refunds of customs duty. This misalignment affected entities who operated in both systems as it led to different outcomes in similar circumstances, sometimes in respect of the same kind of goods in the same warehouse. As an example, if a person paid duty on goods other than gaseous fuel because of manifest error of fact or patent misconception of the law, and the duty was excise duty because the goods were manufactured or produced in Australia, the person had to make an application within 12 months after the day when the excise duty was paid (previous item 1 of the table in section 11 of the Excise Regulation). However, if customs duty was paid on imported finished goods, the person has four years from the date of payment, which can be extended in certain circumstances.

Item 6 of the Schedule to the Regulations amends items 1 and 2 of the table in section 11 of the Excise Regulation so the period in the column headed "Period for giving application" is within four years unless the application relates to goods that are tobacco products, while retaining the start date for this period (for item 1, after when duty is paid; for item 2, from the day on which the relevant by-law is made). Applications relating to tobacco products are not in scope of these amendments. This is not intended to be of significant practical consequence as at commencement there is no commercial manufacture or production of tobacco products in Australia.

Item 6 also adds a new item 2A to this table, which applies the new four-year timeframe both to the existing item 7, relating to goods returned to excise-licensed premises for further manufacture or destruction (see below), and the new item 7A relating to recovered vapour (both discussed in the previous section). Since item 7 may relate to tobacco products, this timeframe is applied only if the application relates to goods other than tobacco products.

Item 7 also replaces references to "12 months" in the "Period for giving application" column to "4 years" for refund items 3, 4 and 5 of the table in section 11. None of these items relate to tobacco products.

Applying new time limits to certain circumstances where no timeframe applies

Previously, eleven refund circumstances in the table in subclause 1(1) of Schedule 1 were not referred to in the table in section 11. This meant an application for a refund under those circumstances could have been made at any time.

For three of these items, the new four-year timeframe is more appropriate than either the current 12-month timeframe or no timeframe. The Regulations apply the new timeframe accordingly. The following table describes these circumstances, the new timeframe and how the Regulations make the relevant amendments.

Item	*Circumstances (including as amended)*	*New application period under section 11*	*Amendment made*
Item 4	Excise duty has been paid on gaseous fuel because of manifest error of fact or patent misconception of the law, unless: • the excise duty was paid in circumstances in which excise duty was not payable; • the gaseous fuel was sold to a person for a price that included an amount for excise duty (the excise duty portion); and • an amount equal to the excise duty portion has not been refunded or credited to the person.	Four years after the day when the excise duty was paid.	Added to item 1 of the table in section 11 as amended (item 6 of the Schedule to the Regulations).
Item 7	Excise duty has been paid on goods that: • have not been used; • are returned to premises covered by a licence under section 39A of the Excise Act, or a person authorised	Four years after the day when the excise duty was paid, except in relation to tobacco products (applications can continue to be made at any time).	Included with new item 7A (relating to vapour recovery – see previous section) in new item 2A in the table in section 11 (item 6 of the Schedule to the Regulations).

Item	*Circumstances (including as amended)*	*New application period under section 11*	*Amendment made*
	by the manufacturer of the goods to receive goods on behalf of the manufacturer • are destroyed, or are subjected to further manufacture or production; and • to which item 7A does not apply.		
Item 18	Excise duty has been paid or is payable on a recycled product: • that is hydraulic oil, brake fluid, transmission oil, transformer oil or heat transfer oil classified to subitem 15.2 of the Schedule to the Excise Tariff Act; • for which no benefit is payable under the *Product Stewardship (Oil) Regulations 2000*; • that is for the same use it had before being recycled; and • for an application for remission of excise duty – that is delivered in accordance with a permission given under section 61C of the Excise Act.	Four years after the day when the excise duty was paid.	New item 5A in the table in section 11 (item 8 of the Schedule to the Regulations).

Application and transitional provisions

Customs Regulation amendments

Item 3 of the Schedule to the Regulations inserts a new section 163 into Part 18 of the Customs Regulation. This Part contains various transitional arrangements for amendments made to the Customs Regulation over time.

New subsection 163(1) provides that the amendments made by items 1 and 4 in Part 1 of the Schedule apply to goods in respect of which customs duty was paid on or after 1 July 2024. This means amendments providing a new refund circumstance to address double-taxation on certain petroleum-based lubricants apply where the customs duty on the relevant goods used in further manufacturing was paid on or after 1 July 2024.

New subsection 163(2) provides that the amendments made by the rest of Part 1 of the Schedule – which insert a new remission for "bunker" fuels – apply to goods on which duty is payable on or after 1 January 2025. This delayed application provides industry an additional six months to put in place necessary administrative arrangements to accurately accommodate the new remission.

Excise Regulation amendments

Item 12 of the Schedule to the Regulations inserts a new section 63 into Part 8 of the Excise Regulation. This Part also contains various transitional arrangements for amendments made to that Regulation over time.

Subsection 63(1) provides that the amendments made to Excise Regulation by the Regulations, other than item 16, apply in relation to excise duty paid on or after 1 July 2024. This means that amendments extending the timeframe for certain refund time limits, applying those timeframes to three circumstances currently with no timeframes, and creating a new refund circumstance and method for fuel recovered using vapour recovery units, apply in relation to excise duty paid on or after 1 July 2024. As examples:

- For an application for a refund which previously had a 12-month application timeframe, and duty is paid on or after 1 July 2024, an application for a refund can be made until the end of the period starting four years from when the duty was paid. The current 12-month period will continue to apply if the duty was paid before 1 July 2024 even if the application is made after that date.
- For an application for a refund under items 4, 7 and 8 in the table in subclause 1(1) of Schedule 1 to the Excise Regulation (which previously had no application timeframe, but to which the Regulations apply a four-year timeframe) – if the relevant duty was paid before 1 July 2024 an application can continue to be made at any time. For relevant duty paid on or after 1 July 2024 an application must be made within four years of payment.
- As the previous item 7 does not apply to circumstances when item 7A applies, the new method for determining a refund amount for fuel returned to an excise-licensed premise and recovered using a vapour recovery unit applies to all refunds to which those circumstances apply, to the exclusion of the current arrangements, where the original duty is paid on or after 1 July 2024. Where duty was paid before 1 July 2024, previous arrangements apply even where an application is made on or after that date.

Subsection 63(2) provides that item 16, which creates a new remission circumstance in subclause 2(1) of Schedule 1 to the Excise Regulation in respect of "bunker" fuels, applies in relation to goods on which excise is payable on or after 1 January 2025. In the context of the Excise Act, entry into home consumption means entry as contemplated, and in any form required, by section 58, or section 61C(2) of the Excise Act. This delayed application provides industry an additional six months to put in place necessary administrative arrangements to accurately accommodate the new remission.

Part 2 – Consequential amendments

Part 2 of the Schedule to the Regulations contains consequential amendments to the Customs Regulation arising from the Amending Bill.

Item 17 of the Schedule to the Regulations repeals subsection 35(4) of the Customs Regulation. This subsection related to a warehouse licence charge worked out under section 6E of the *Customs Licencing Charges Act 1997*. Section 6E is repealed by item 165 of the Schedule to the Amending Bill.

Item 18 repeals item 9 in the table in section 146 of the Customs Regulation and substitutes new items 9 and 9A, referring respectively to subparagraphs 86(1AA)(b)(ii) and 86(1AD)(b)(ii) of the Customs Act.

The table in section 146 of the Customs Regulation prescribes the *Aviation Transport Security Act* ("ATS Act") for the purpose of various listed provisions in the Customs Act. Previously, item 9 specified the ATS Act for the purposes of subparagraph 86(3)(b)(ii), with effect that the Comptroller-General of Customs could issue a licence suspension notice under section 86 if that appeared to the Comptroller-General necessary to ensure compliance with the ATS Act. The Amending Bill moves this power to subparagraph 86(1AA)(b)(ii), and also adds a power in subparagraph 86(1AD)(b)(ii) to issue a similar notice in respect of only one warehouse covered by a licence. Item 18 of the Schedule to the Regulations therefore ensures compliance with the ATS Act continues to be a basis on which the Comptroller-General can issue relevant notices.

Financial impacts of amendments

The amendments made by the Regulations are estimated to have the following financial impacts:

- Extending the 12-month time limit for certain excise refunds is estimated to have no impact on receipts over the 5 years from 2023-24;
- Amendments to duty refunds for fuel recovered using vapour recovery units are estimated to have no impact on receipts over the 5 years from 2022-23;
- The amended refund circumstance to avoid double-taxation of certain petroleum-based lubricants is estimated to have an unquantifiable impact on receipts over the 5 years from 2022-23; and
- The "bunker" fuel amendments are estimated to have the following impact on the underlying cash balance over the 5 years from 2023-24 ($m):

	2023-24	2024-25	2025-26	2026-27	2027-28
Receipts	0.0	-129.0	-276.0	-283.0	-290.0
Payments	0.0	112.0	276.0	283.0	290.0

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Excise and Customs Legislation Amendment (Streamlining Administration) Regulations 2024

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 purpose of the *Excise and Customs Legislation Amendment (Streamlining Administration) Regulations 2024* (the Regulations) is to amend the *Excise Regulation 2015* (Excise Regulation) and the *Customs Regulation 2015* (Customs Regulation) to:

- extend the 12-month time limit for certain excise refunds to a four-year time limit, and apply this new time limit to certain refund circumstances currently with no time limit;
- provide for the remission of duties otherwise payable in respect of "bunker" fuel used in shipping vessels undertaking domestic voyages;
- introduce a new refund circumstance for customs duties paid on certain petroleum based oils to address double-taxation when these oils are used in further manufacture;
- introduce a new refund circumstance with a standard formula for the refund of duty paid on fuels processed back into excisable fuel by vapour recovery units; and
- make amendments consequential on the *Excise and Customs Legislation Amendment (Streamlining Administration) Bill 2024* (if enacted).

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

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