2004-2005-2006

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EXCISE LAWS AMENDMENT (FUEL TAX REFORM AND OTHER MEASURES) BILL 2006

EXCISE TARIFF AMENDMENT (FUEL TAX REFORM AND OTHER MEASURES) BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Treasurer, the Hon Peter Costello MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

Abbreviation	***Definition***
ATO	Australian Taxation Office
BAS	Business Activity Statement
CEO	Commissioner of Taxation
Coal Excise Act	*Coal Excise Act 1949*
Collector	Commissioner of Taxation or an authorised officer
Distillation Act	*Distillation Act 1901*
Excise Act	*Excise Act 1901*
excise tariff	Schedule to the *Excise Tariff Act 1921*
Excise Tariff Act	*Excise Tariff Act 1921*
Spirits Act	*Spirits Act 1906*

General outline and financial impact

Excise tariff amendments

Schedule 1 to the Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006 replaces the current Schedule to the *Excise Tariff Act 1921* (excise tariff) and amends the *Excise Tariff Act 1921* (Excise Tariff Act) to implement certain elements of the Government's fuel tax reforms and clarifies and simplifies this Act with a view to reducing compliance costs for excise manufacturers, importers and administering authorities. This measure arises from the review of the excise tariff.

Date of effect: This measure applies from 1 July 2006 but three items in Schedule 1 relating to the validation of an excise tariff proposal apply from 1 November 2005.

Proposal announced: The decision to remove the effective excise on burner fuels and to replace existing rebates and subsidies with a fuel tax credit was announced in the Treasurer's Press Release No. 049 of 15 June 2004. The review was announced in the then Minister for Revenue and Assistant Treasurer's Press Release No. 047 of 3 June 2005.

Financial impact: The implementation of the transition of fuel tax relief being delivered through excise and customs duty arrangements to the fuel tax credit system will have the following financial impact:

Revenue ($m)	***2006-07***	***2007-08***	***2008-09***	***2009-10***
Australian Customs Service				
Excise equivalent customs duty	250	260	270	280
Australian Taxation Office				
Excise duty	240	250	260	270
Expenses ($m)	***2006-07***	***2007-08***	***2008-09***	***2009-10***
Australian Taxation Office				
Fuel tax credits	500	510	530	550
Impact on fiscal balance ($m)	–10	–10	–10	–10

Figures in the above table have been rounded to the nearest $10 million.

Discrepancies between totals and sums of components are due to rounding.

The costing reflects the fact that excise duty of 38.143 cents per litre and customs duty at the excise equivalent rate of 38.143 cents per litre is now applicable to all fuels (other than aviation fuels) and relief from the incidence of fuel tax (whether excise or customs duty) is delivered through a fuel tax credit, through the provisions of the Fuel Tax Bill 2006. The net cost of this measure of $10 million per annum is a reflection of the effective loss of revenue because private households that use burner fuels for heating, such as heating oil for heating residences, no longer bear the incidence of excise of 7.557 cents per litre. It is estimated that there are 90,000 such households.

The net cost is consistent with the net cost of the measures 'Removal of excise on burner fuels' and 'Removal of grants on burner fuels' published in June 2004 in the energy white paper *Securing Australia's Energy Future*. The costings are done on a different basis as they now separate the effects on customs and excise duty and they reflect the confirmed legislative mechanism. In addition, the gross excise and customs duty figures reflect increases in volumes of fuel oil utilised by industries such as minerals processing since the original costing.

The alignment of snuff tobacco rate with the ordinary tobacco rate will have the following revenue implications:

Revenue ($m)	***2006-07***	***2007-08***	***2008-09***	***2009-10***
Australian Taxation Office				
Excise duty	nil	nil	nil	nil

Compliance cost impact: The changes proposed in this Bill, in conjunction with fuel tax reform measures in the Fuel Tax Bill 2006, will rebalance compliance costs for end users of fuel. Business users receiving fuel effectively excise free either through remission arrangements or free rates of duty will purchase fuel subject to fuel tax (excise) and claim fuel tax credits directly via the Business Activity Statement. The rebalancing will arise from different parties having changed obligations under the fuel tax reform measures.

Simplification of the excise tariff will have some transitional compliance costs for taxpayers as they will modify their accounting systems to reflect the changes made. However, it will decrease compliance costs in the longer term due to the decrease in legislative complexity which assists in simplifying reporting. In particular, the removal of coal from the excise tariff, along with the repeal of the *Coal Excise Act 1949* (Coal Excise Act), will reduce compliance costs for coal manufacturers. Subitems in the excise tariff relating to concessional spirit are also significantly simplified which will reduce compliance costs for users of these products.

Excise laws amendments

Schedule 1 to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006 amends the *Excise Act 1901*, (Excise Act) and makes consequential amendments to a number of other Acts, to implement a number of measures to streamline existing excise arrangements, protect the revenue and promote best practice regulation. It also amends the *Energy Grants (Cleaner Fuels) Scheme Act 2004* so that fuel manufactured through a process of hydrogenating vegetable oils or animal fats receives the same tax treatment as biodiesel.

Schedule 2 to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006 repeals the Coal Excise Act, the *Distillation Act 1901*, the *Fuel Blending (Penalty Surcharge) Act 1997*, the *Fuel Misuse (Penalty Surcharge) Act 1997*, the *Fuel (Penalty Surcharges) Administration Act 1997*, the *Fuel Sale (Penalty Surcharge) Act 1997* and the *Spirits Act 1906* which are no longer required.

Date of effect: This measure applies from 1 July 2006.

Proposal announced: The review was announced in the then Minister for Revenue and Assistant Treasurer's Press Release No. 047 of 3 June 2005. The decision to provide the same tax treatment to a biofuel made by a process of hydrogenation as that given to biodiesel was announced in the Prime Minister's Press Release of 31 March 2006.

Financial impact: The alignment of the tax treatment of renewable diesel made by a process of hydrogenation of tallow with that given to biodiesel will have the following financial implications:

Expenses ($m)	***2006-07***	***2007-08***	***2008-09***	***2009-10***
Australian Taxation Office				
Energy Grants (Cleaner Fuels) Scheme	18	27	27	27

Compliance cost impact: Changes to the arrangements for concessional spirit will decrease compliance costs for users of these products through a reduction in the administrative burden. Individual approvals for the use of spirits will also no longer be necessary in certain circumstances. The repeal of the fuel penalty surcharge legislation will reduce compliance costs for fuel manufacturers.

The repeal of the Coal Excise Act will reduce compliance costs for coal manufacturers.

Certain overly prescriptive requirements in the Excise Act are repealed. Similarly, those provisions of the Spirits Act and the Distillation Act, both of which are repealed, that are highly prescriptive and interventionist in terms of how a person conducts their business, are not transferred to the Excise Act.

The establishment of common validity periods for excise licences will mean that certain licence holders (in particular, tobacco producers) will move from an unlimited period to a three-yearly renewal.

The removal of prescribed reporting mechanisms for tobacco producers will mean that reporting requirements for individual producers can be better tailored to risk, in accordance with the Australian Taxation Office's compliance model.

Revenue protection measures have the potential to increase compliance costs for affected parties, but it is expected that behavioural change will occur and the affected activities may no longer be carried out.

Chapter 1
Excise tariff amendments

Outline of chapter

1.1 Schedule 1 to the Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006 replaces the current Schedule to the *Excise Tariff Act 1921* (excise tariff) and amends the *Excise Tariff Act 1921* (Excise Tariff Act) to implement certain elements of the Government's fuel tax reforms and clarifies and simplifies this legislation with a view to reducing compliance costs for excise manufacturers, importers and administering authorities.

Context of amendments

1.2 In the energy white paper, *Securing Australia's Energy Future*, the Government announced a major programme of reform to modernise and simplify the fuel tax system. The reform programme will commence on 1 July 2006, with the introduction of a single fuel tax credit system to replace the current complex system of fuel tax concessions.

1.3 The changes will lower compliance costs, reduce tax on business and remove the burden of fuel tax from thousands of individual businesses and households. Under fuel tax reform the effective application of fuel tax will be limited to:

- business use of fuel in on-road applications in motor vehicles with a gross vehicle mass of 4.5 tonnes or less;
- business use of fuel on-road in motor vehicles with a gross vehicle mass of more than 4.5 tonnes (with the exception of a carve-out intending to preserve previous entitlements for eligible fuel use in vehicles with a gross vehicle mass of 4.5 tonnes) but only to the extent of the road-user charge;
- private use of fuel on-road in motor vehicles and in certain off-road applications; and
- aviation fuels (where tax is imposed for cost recovery reasons).

1.4 The Fuel Tax Bill 2006 combines in one piece of legislation, the means of providing fuel tax relief to businesses and households. It is intended that from 1 July 2011, this Bill will also provide the legislative basis for taxing certain liquefied and compressed gaseous fuels, when fuel tax is levied on liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG) for the first time.

1.5 This system — taxing and crediting — is necessary to deal with the fact that currently fuel tax is paid under excise and customs duty legislation by the manufacturer or importer of the fuel, generally well before its eventual use (whether in a private vehicle or otherwise). Therefore, the fuel tax is levied under current arrangements on the assumption that the fuel could be used in a taxable way, and credits are allowed to reverse the effect of the tax when it becomes clear that the fuel will be put to a non-taxable use covered by the legislation.

1.6 Among other things, under the new arrangements the fuel tax currently levied on burner fuels (products used as a source of external heat rather than for powering an internal combustion engine, such as fuel oil, heating oil and kerosene) will be effectively removed from 1 July 2006. This will be achieved by such fuels being subject to the same excise rate as fuels used in transport applications (other than aviation fuels) with an offsetting fuel tax credit available for eligible users. It was also announced that the new fuel tax credits system will replace all existing rebates and subsidies and in this context, subsidies include concessional and free rates of excise duty.

1.7 The current excise tariff sets out the rate of excise applicable to certain products. It has been amended a number of times over many years, and developed in an ad hoc fashion. As a result it contains redundant items and items that are unnecessarily complex and difficult to understand. As set out above, to implement the effective removal of excise duty from burner fuels, amendment to the excise tariff is needed.

1.8 This need and the introduction of a number of fuel tax reforms on 1 July 2006 provided an opportunity to review the excise tariff more generally, with a view to clarifying arrangements and reducing compliance costs for excise manufacturers, importers and administering authorities.

Summary of new law

1.9 Schedule 1 to the Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006 implements the following amendments:

- streamlining the existing excise tariff to reduce complexity and to promote the excise tariff being concerned, as far as possible, with the classification of goods with a view to taxing them;
- removal from the excise tariff of concessional rates of excise duty currently available on burner fuels and free rates of duty currently available on fuels used otherwise than as fuels;
- removal from the excise tariff of goods for use by certain parties (with concessional treatment to be delivered by other means);
- inclusion in the excise system of fuel from various non-petroleum sources, and exclusion of certain product which is recycled for own use;
- application of the non-stick tobacco excise rate to snuff tobacco;
- clarification of certain definitions and the omission of certain redundant definitions; and
- removal of redundant indexation provisions.

Comparison of key features of new law and current law

New law	***Current law***
The excise tariff is streamlined, incorporating a simpler, two-tier numbering system.	The excise tariff has a complex numbering system, a number of disaggregations which are not necessary for tax policy reasons, often with prospective use of products as a basis for classification.
Concessional rates of excise duty for burner fuels and free rates of duty for fuels used otherwise than as fuel are no longer available.	Concessional rates of excise duty are available for burner fuels and free rates of duty fuels are available on fuels for use otherwise than as fuel (such as solvents).

New law	*Current law*
Duty-free treatment for products for use by certain parties are no longer delivered by free rates in the excise tariff.	The excise tariff provides for free rates of duty where products are for use by certain parties.
Fuel from various non-petroleum sources is captured by the excise tariff and a certain product which is recycled for own use is excluded.	Fuel from various non-petroleum sources is not expressly captured by the excise tariff.
The tobacco rate applies to all tobacco products not in stick form, including snuff tobacco.	Snuff tobacco is subject to a lower rate of excise than other tobacco.
Certain definitions are clarified and redundant definitions and indexation provisions are omitted.	There are several redundant definitions in the commencing note to the excise tariff and certain redundant indexation provisions in the Excise Tariff Act.

Detailed explanation of new law

Amendments to the commencing notes to the excise tariff

Repeal of definitions

1.10 The current commencing notes to the excise tariff contain definitions for 'fruit brandy', 'liqueur', 'rum' and 'whisky'. When these items were introduced many years ago there were differences in the duty rates for each item. The excise duty payable on these items is now the same. There is no longer a need to define these items as they are covered by the definition of 'other excisable beverages'. However, because 'rum' and 'whisky' need to be defined for the purposes of the *Excise Act 1901* (Excise Act), these definitions are included in that Act (see paragraph 2.70). ***[Schedule 1, items 31, 33, 36 and 37]***

1.11 'N.E.I.' is defined in a current commencing note to the excise tariff as 'not elsewhere included'. For ease of reading, where this term is needed it is included in full rather than abbreviated. ***[Schedule 1, item 29]***

Definitions of brandy and grape wine

1.12 The excise duty rate applicable to 'brandy' is at a lower rate than that applicable to other excisable beverages and so it is necessary to provide a definition so that only brandy as defined pays duty at that rate. ***Brandy*** is defined in a commencing note to the excise tariff to be a spirit that has been distilled from grape wine so that it tastes and smells like

brandy and possesses other characteristics such as colour that are expected of brandy ***[Schedule 1, item 30]***. So-called fruit brandies such as peach brandy and apricot brandy do not fall within this definition as they are not distilled from 'grape wine'.

1.13 'Grape wine' is defined in a commencing note to the excise tariff by reference to the *A New Tax System (Wine Equalisation Tax) Act 1999* ***[Schedule 1, item 32]***. This ensures a consistent definition across alcoholic beverages and reinforces that brandy applies to spirit of grape origin but not of origin from other fruits.

Definitions of other excisable beverage and wine

1.14 The term 'other excisable beverage' is defined in an existing commencing note to the excise tariff and currently excludes fruit brandy, liqueur, rum and whisky. The definitions of these excluded products are repealed (see paragraph 1.10). ***Other excisable beverage*** is therefore defined in a commencing note to the excise tariff as any beverage which contains more than 1.15 per cent alcohol by volume other than beer, brandy or wine ***[Schedule 1, item 35]***. This term therefore includes spirits that are beverages, for example, whisky, rum, fruit brandy, gin and vodka. It also includes liqueurs.

1.15 'Beer' and 'brandy' are currently defined in the commencing notes to the excise tariff. 'Beer' continues to be defined as it has a different excise duty rate to that applying to other excisable beverages. 'Wine' is also defined to have the same meaning as in Subdivision 31-A of the *A New Tax System (Wine Equalisation Tax) Act 1999*.
[Schedule 1, item 39]

Definition of lubricant/fluid/oil products

1.16 'Lubricant/fluid/oil products' are defined in the commencing note to cover products in item 15 of the excise tariff, to remove the need for repetition within that item for ease of reading. ***[Schedule 1, item 34]***

Definition of territorial sea

1.17 'Territorial sea' is defined in the commencing notes to the excise tariff to have the same meaning as in the *Seas and Submerged Lands Act 1973* to provide consistency across Commonwealth legislation.
[Schedule 1, item 37]

Other amendments

1.18 A current commencing note to the excise tariff, relating to the volume of alcohol contained in goods, is updated to refer to a provision in

the Excise Act (see paragraph 2.37), rather than section 77FB which is repealed. ***[Schedule 1, item 41]***

1.19 A current commencing note to the excise tariff states that all imitations are dutiable at the rate chargeable on the goods they imitate, unless such rate is less than the rate which would otherwise be chargeable on the imitations. This is repealed as it is not relied on in practice and it is more desirable from policy and legislative perspectives to explicitly state in the excise tariff which goods are excisable. ***[Schedule 1, item 28]***

The excise tariff

1.20 The current excise tariff is repealed and replaced by a new excise tariff which incorporates a revised numbering system ***[Schedule 1, item 45]***. Rather than incorporating items, subitem, paragraphs and subparagraphs, the excise tariff incorporates a simpler, two-tier numbering system with only items and subitems. Rather than numbering items and subitems consecutively, some numbers have been omitted from the excise tariff to accommodate the inclusion of additional items and subitems should that be required in the future.

Beer item and subitems

1.21 Beer is classified to item 1 in the excise tariff provided it meets the definition of 'beer' in the commencing note to the excise tariff ***[Schedule 1, item 45, item 1 in the table]***. There are eight subitems providing the rates of duty applicable to beer.

1.22 The classification of beer produced for non-commercial purposes but using commercial facilities or equipment depends on the strength of the beer. Subitem 1.15 of the excise tariff applies to this type of beer, with this beer not exceeding 3 per cent by volume of alcohol. Subitem 1.16 applies to this type of beer exceeding 3 per cent by volume of alcohol. Commercial facilities or equipment provided to people for the purpose of making non-commercial beer — that is beer that is not for sale or other commercial purposes — are sometimes referred to as brew-on-premises shops. Subitems 1.15 and 1.16 in the excise tariff have a specified rate of duty that is subject to the indexation provisions of section 6A (see paragraph 1.124). ***[Schedule 1, item 45, subitems 1.15 and 1.16 in the table]***

1.23 Beer not classifiable to subitems 1.15 or 1.16 is beer produced for commercial purposes using commercial facilities or equipment. It is classified according to the alcohol content and the size of the container it is in.

1.24 Subitems 1.1 and 1.2 in the excise tariff refer to beer not exceeding 3 per cent by volume of alcohol. This beer, when packaged in an individual container not exceeding 48 litres, is classified to subitem 1.1 in the excise tariff. When packaged in a container exceeding 48 litres this beer is classified to subitem 1.2. ***[Schedule 1, item 45, subitems 1.1 and 1.2 in the table]***

1.25 Subitems 1.5 and 1.6 in the excise tariff refer to beer exceeding 3 per cent by volume of alcohol but not exceeding 3.5 per cent by volume of alcohol. This beer, when packaged in an individual container not exceeding 48 litres is classified subitem 1.5 in the excise tariff. When packaged in a container exceeding 48 litres this beer is classified to subitem 1.6. ***[Schedule 1, item 45, subitems 1.5 and 1.6 in the table]***

1.26 Subitems 1.10 and 1.11 in the excise tariff refer to beer exceeding 3.5 per cent by volume of alcohol. This beer, when packaged in an individual container not exceeding 48 litres is classified to subitem 1.10 in the excise tariff. When packaged in a container exceeding 48 litres this beer is classified to subitem 1.11. ***[Schedule 1, item 45, subitems 1.10 and 1.11 in the table]***

1.27 The references to a container exceeding 48 litres in the subitems above cover the amount of beer in the container. For example, if a container with a capacity of 50 litres is packaged with 47 litres of beer this does not fall within the terms of subitem 1.2, 1.6 or 1.11.

Other excisable beverages item and subitem

1.28 Other excisable beverages which fall within the definition in the commencing note to the excise tariff (see paragraph 1.14) and that do not exceed 10 per cent by volume of alcohol are classified to item 2 in the excise tariff ***[Schedule 1, item 45, item 2 in the table]***. Examples include beverages known as ready-to-drink beverages consisting of spirits premixed with flavoured drinks in which the alcohol by volume does not exceed 10 per cent.

1.29 Other excisable beverages exceeding 10 per cent by volume are classified to subitem 3.2 in the excise tariff. Subitem 3.2 covers all alcoholic beverages that are not beer, wine or brandy, where the alcohol by volume exceeds 10 per cent ***[Schedule 1, item 45, subitem 3.2 in the table]***. This includes fermented beverages, that do not meet the definitions of beer or wine in the commencing note to the excise tariff, and spirits such as whisky, rum, vodka and other distilled spirits, provided the alcohol by volume exceeds 10 per cent.

Spirits item and subitems

1.30 Item 3 in the excise tariff covers spirits and other excisable beverages of which the alcoholic by volume exceeds 10 per cent. ***[Schedule 1, item 45, item 3 in the table]***

1.31 Subitem 3.1 in the excise tariff applies to 'brandy' as it is defined in the commencing note to the excise tariff (see paragraph 1.12). ***[Schedule 1, item 45, subitem 3.1 in the table]***

1.32 Under current law, spirit can be used for certain purposes and attract a free rate of duty. These purposes include for fortifying Australian wine or grape must (ie, grape juice), for industrial or scientific purposes and for use in universities and public hospitals. Methylated spirits, that is spirits which has added to it specified substances, also attracts a free rate of duty.

1.33 Spirits subject to free rates of duty are regulated by current provisions contained in the *Spirits Act 1906* (Spirits Act), the *Distillation Act 1901* (Distillation Act) and the Excise Act. The same outcome is achieved by the excise tariff, that is, spirits can be used for certain purposes and attract a free rate.

1.34 Changes to the concessional spirits regime have the aim of reducing the administrative impact of users on concessional spirits. These changes are not intended to restrict access to concessional spirit available under the current regime but rather to simplify for users and the Australian Taxation Office (ATO) the administration of the system and to make clear the overriding policy principles under which a spirit is eligible for excise-free treatment. The relevant subitems in the excise tariff rely on provisions within the Excise Act (see paragraphs 2.53 to 2.68).

1.35 Subitem 3.5 in the excise tariff provides that spirits may be used, by a person who has approval, to fortify Australian wine or Australian grape must. The approval is provided under section 77FD of the Excise Act and may contain conditions to which the approval is subject (see paragraph 2.54). Spirits covered by the approval attracts a free rate of duty ***[Schedule 1, item 45, subitem 3.5 in the table]***. 'Wine' takes its meaning from the *A New Tax System (Wine Equalisation Tax) Act 1999* (see paragraph 1.15). It therefore follows that this subitem can cover grape spirit, brandy or neutral spirit depending on what wine is being fortified (eg, grape wine can be fortified with either brandy or grape spirit, and fruit or vegetable wine can be fortified with either grape spirit or neutral spirit).

1.36 Subitem 3.6 in the excise tariff provides that spirits may be used, by a person who is included in a class of persons under section 77FE of

the Excise Act (see paragraph 2.56) for use in industrial, manufacturing, scientific, medical, veterinary or educational purposes. Spirits covered by the approval attract a free rate of duty ***[Schedule 1, item 45, subitem 3.6 in the table]***. The Commissioner of Taxation (CEO) may determine that a particular class of persons are able to take delivery of a limited quantity of spirits for use in industrial, manufacturing, scientific, medical, veterinary or educational purposes. This item reduces the administrative burden on the ATO and concessional spirits users by not requiring individual approvals for use of a spirit to be entered under this item.

1.37 Subitem 3.7 in the excise tariff provides that spirits may be used, by a person who has an approval, for use in industrial, manufacturing, scientific, medical, veterinary or educational purposes. The approval is provided under section 77FF of the Excise Act (see paragraph 2.57). Spirits covered by the approval attract a free rate of duty. The approval to take delivery of the spirits may specify that the spirits meet certain conditions, for example, the spirits must contain other substances. ***[Schedule 1, item 45, subitem 3.7 in the table]***

1.38 Subitem 3.8 in the excise tariff applies to spirit that has had denaturing substances added to it, in accordance with an approved formula, to make the spirits unsuitable to drink. Such spirits attract a free rate. The formulas are approved in accordance with section 77FG of the Excise Act ***[Schedule 1, item 45, subitem 3.8 in the table]***. This will make it simpler for adaptations to be made for industry's changing needs by including new formulations. Once a formulation is approved this will result in less record keeping for users of those spirits who would otherwise require approval to receive spirits classified to subitem 3.7. Provisions in the Excise Act will make it an offence to remove, without permission, the denaturing substances from spirits once it has been delivered (see paragraph 2.71).

1.39 Subitem 3.10 covers spirits that are not covered by other items. This includes spirits that are not beverages but also do not qualify as any of subitem 3.5, 3.6, 3.7 or 3.8. ***[Schedule 1, item 45, subitem 3.10 in the table]***

Tobacco, cigars, cigarettes and snuff item and subitems

1.40 In the current excise tariff, there are separate items for tobacco, cigars and cigarettes. Each of these items has a subitem for the relevant product being in stick form (with the rate of duty being the same across the tobacco, cigar and cigarette subitems) and a subitem for the relevant product being in other form (with the rate of duty being the same across tobacco, cigar and cigarette subitems).

1.41 In addition, there is a separate item for snuff which currently attracts a significantly lower rate per kilogram than other loose tobacco products.

1.42 Snuff is powdered tobacco used for nasal or oral ingestion. The sale of snuff domestically is banned under the *Trade Practices Act 1974*, and snuff is also banned by some States and Territories. Snuff may be imported in small quantities for personal use subject to certain restrictions. The large disparity in rates arises for historical reasons and is no longer appropriate. For tax policy reasons it is desirable that there be no differentiation in the rates for snuff tobacco and ordinary tobacco. From a compliance perspective, given the current large disparity in rates, the continuing low rate for snuff is a risk to the revenue because of the potential for incorrect description of imported tobacco products.

1.43 Under the excise tariff, a general item to cover tobacco, cigars, cigarettes and snuff replaces the current separate items ***[Schedule 1, item 45, item 5 in the table]***. The two relevant subitems are as follows:

- in stick form not exceeding in weight 0.8 grams per stick actual tobacco content ***[Schedule 1, item 45, subitem 5.1 in the table]***; and

- other ***[Schedule 1, item 45, subitem 5.5 in the table]***. This subitem captures snuff and therefore snuff attracts the same rate of duty as tobacco not in stick form.

1.44Although snuff is not manufactured in Australia, an excise equivalent rate of customs duty will apply to imported snuff. This means that any permitted personal importations will be subject to the same rate of duty as tobacco not in stick form.

Fuel item

1.45 The Government's policy is that all fuels which can be used in an internal combustion engine should be subject to fuel tax. On this basis, the excise tariff captures liquid fuels irrespective of their production method or feedstock.

1.46 However, the excise legislation may not be amenable to delivering the Government's policy where fuels have a number of uses and it may be more appropriate that a tax liability be created where they are used for a taxable purpose. Examples of such fuels used in transport applications (see paragraph 2.5) include liquefied petroleum gas (LPG), compressed natural gas (CNG) and liquefied natural gas (LNG). These continue not to be excisable and will be brought into the fuel tax net at a later stage.

1.47 The fuel item effectively summarises what can be classified under the fuel subitems in the excise tariff. Certain changes from the current law are implemented by the fuel item ***[Schedule 1, item 45, item 10 in the table]***. These changes are summarised in the following table:

New item	***Current item***
There is a class of liquid hydrocarbon products derived through a recycling, manufacturing or other process included in the fuel item. (This means that all liquid hydrocarbon products derived through a recycling process are included in the fuel item.) Liquefied petroleum gas and bitumen are general exclusions from the fuel item. Refined or semi-refined liquid products derived from petroleum are included. However, if these products are for use in refining petroleum condensate or stabilised crude petroleum oil (other than in an internal combustion engine) they are excluded from this product class.	Refined or semi-refined liquid petroleum or shale oil products are included. Diesel fuel produced or manufactured by the process of refining waste oil and gasoline or diesel fuel recovered by a recycling process other than refining are expressly identified as being included within the refined or semi-refined liquid petroleum or shale oil product class. Liquefied petroleum gas, lubricating oils (including lubricant base oils), hydraulic oils, transformer oils, bitumen oils and recycled products other than those specified as inclusions are expressly identified as being excluded from the refined or semi-refined liquid petroleum or shale oil product class. Coal tar, coke oven distillates, aromatic hydrocarbons and light oils consisting principally of aromatic hydrocarbons (not being petroleum, shale oil or recycled products) are included.
Topped crude oil is expressly included.	There is no express mention of topped crude oil.

New item	***Current item***
Petroleum condensate and stabilised crude petroleum oil is included. Products are excluded from this product class and the fuel item, where they are for use in the recovery, production, *pipeline* transportation, or refining of petroleum condensate or stabilised crude petroleum oil and as feedstock at a factory specified in a licence granted under Part IV of the Excise Act.	Petroleum condensate and stabilised crude petroleum oil products are included. Products are excluded from this product class where they are for use as a petroleum refinery feedstock (ie, in recovery, production, transportation or refining of stabilised crude oil or condensate) at a factory specified in a licence granted pursuant to Part IV of the Excise Act.
No change.	Denatured ethanol for use in an internal combustion engine (fuel ethanol) is specifically included.
The definition of 'biodiesel' is amended to exclude the requirement that the fuel is made for use in an internal combustion engine.	Biodiesel means fuel for use in an internal combustion engine that is manufactured from animal fats or vegetable oils to form mono-alkyl esters.
Blends of one or more goods in the fuel item (with or without other substances) are included, unless they are excluded by an identified section of the Excise Act.	There is no express mention of blends in the fuel item. (Blends are covered by a separate item.)
All products classified to item 15 of the excise tariff are excluded. (These products are certain oils and lubricants which are subject to a levy as part of the Product Stewardship (Oil) Programme.) This exclusion excludes lubricating oils (including lubricant base oils), hydraulic oils and transformer oils.	Petroleum products classified to item 15 of the excise tariff are excluded.
Waxes (which have properties on the margin between liquid and solid) are excluded to provide certainty.	There is no express mention of waxes.

1.48 As shown in the above table, currently petroleum condensate and stabilised crude petroleum oil products attract excise duty where they are for use otherwise than as a petroleum refinery feedstock at a factory specified in a licence granted pursuant to Part IV of the Excise Act. The crude oil and condensate used as part of the process of extraction, used for transportation from the place of extraction to a refinery and consumed as fuel or feedstock in the refining process are exempt from excise. This exemption applies only to crude oil or condensate.

1.49 These exemptions broadly continue with some refinements. The transportation exemption is limited to pipeline transportation as the Government's fuel tax reform arrangements include a provision that fuel tax applies to the business use of vehicles with a gross vehicle mass of 4.5 tonnes or more, to the extent of a non-hypothecated road-user charge. Accordingly, it would not be appropriate to continue to exempt road transportation in these circumstances.

1.50 As well as crude oil and condensate being exempt, refined or semi-refined liquid products derived from crude oil or condensate used in refining are also exempt, provided they are not used in an internal combustion engine. This means that those fuels used in refining processes that would otherwise be excisable are exempt, other than where used in internal combustion engines (ie, fuel for driving vehicles on the licensed premise would not be exempt).

Petroleum condensate subitem

1.51 Petroleum condensate is a mixture of light liquid hydrocarbons that separates from natural gas when it is cooled after being extracted from a well. Petroleum condensate and stabilised crude petroleum oil for use in the recovery, production, transportation or refining of stabilised crude oil or condensate are currently exempt from excise. Petroleum condensate and stabilised crude petroleum oil products for use otherwise than as a petroleum refinery feedstock at a factory specified in a licence granted pursuant to Part IV of the Excise Act, are excisable.

1.52 Excisable condensate has been classified to current paragraph 11(E)(1), 11(E)(2) or 11(E)(4) of the excise tariff, depending on the intended use. As these paragraphs are repealed, petroleum condensate where excisable as a fuel is classified to subitem 10.1 in the excise tariff, attracting duty at a rate of $0.38143 per litre. ***[Schedule 1, item 45, subitem 10.1 in the table]***

1.53 Under fuel tax reform, all of the current mechanisms for delivering fuel tax-free treatment for petroleum products are removed by

30 June 2006 and from 1 July 2006 fuel tax applies to all petroleum products. Section 41-5 of the Fuel Tax Bill 2006 provides that a business is entitled to claim a fuel tax credit for taxable fuel that they acquire or manufacture in, or import into, Australia that they propose to use in carrying on their enterprise. Where petroleum condensate has been entered against subitem 10.1 of the excise tariff, it is eligible for a fuel tax credit in such circumstances.

Stabilised crude petroleum oil subitem

1.54 Stabilised crude petroleum oil is produced when crude oil from wells is taken to the surface and cooled and treated to achieve a state in which it can be further dealt with, in particular safely transported. Petroleum condensate and stabilised crude petroleum oil for use in the recovery, production, transportation or refining of stabilised crude oil or condensate are currently exempt from excise. Accordingly, petroleum condensate and stabilised crude petroleum oil products for use otherwise than as a petroleum refinery feedstock at a factory specified in a licence granted pursuant to Part IV of the Excise Act, are excisable.

1.55 Stabilised crude oil where excisable because it is being used as a fuel has been classified to current paragraph 11(F)(1), 11(F)(1A), 11(F)(2), 11(F)(4) or 11(E)(5) of the excise tariff, depending on the intended use. Classification according to sulphur content is also in place for revenue protection reasons, given that such a determinant applies in the case of diesel. The classification according to sulphur content is now redundant as the Government's policy objectives in relation to low sulphur fuel are being met through the ultra low sulphur diesel standard which came into force on 1 January 2006.

1.56 As these paragraphs are repealed, crude oil where excisable as a fuel, is classified to subitem 10.2 in the excise tariff, attracting duty at a rate of $0.38143 per litre. ***[Schedule 1, item 45, subitem 10.2 in the table]***

1.57 Under fuel tax reform, all of the current mechanisms for delivering fuel tax-free treatment for petroleum products are removed by 30 June 2006 and from 1 July 2006 fuel tax applies to all petroleum products. Section 41-5 of the Fuel Tax Bill 2006 provides that a business is entitled to claim a fuel tax credit for taxable fuel that they acquire or manufacture in, or import into Australia that they propose to use in carrying on their enterprise. Where crude oil has been entered against subitem 10.2 of the excise tariff, it is eligible for a fuel tax credit in such circumstances.

Topped crude petroleum oil subitem

1.58 Topped crude petroleum oil is produced when the more valuable light fractions are removed from crude oil. It can be used as a substitute for fuel oil and other heavy fuels.

1.59 Topped crude petroleum oil has been classified to current paragraph 11(G)(1), 11(G)(2), 11(G)(2A), 11(G)(3), 11(G)(5) or 11(G)(6) of the excise tariff, depending on the intended use. These current classifications include a sulphur content differentiation which is redundant.

1.60 As these paragraphs are repealed, topped crude oil is classified to subitem 10.3 of the excise tariff, attracting duty at a rate of $0.38143 per litre. ***[Schedule 1, item 45, subitem 10.3 in the table]***

1.61 Under fuel tax reform, all of the current mechanisms for delivering fuel tax-free treatment for petroleum products are removed by 30 June 2006 and from 1 July 2006 fuel tax applies to all petroleum products. Section 41-5 of the Fuel Tax Bill 2006 provides that a business is entitled to claim a fuel tax credit for taxable fuel that they acquire or manufacture in, or import into, Australia that they propose to use in carrying on their enterprise. Where topped crude oil has been entered against subitem 10.3 of the excise tariff, it is eligible for a fuel tax credit in such circumstances.

Gasoline (other than for use as fuel in aircraft) subitem

1.62 Gasoline (also known as petrol or motor spirit) has been classified to current subparagraph 11(H)(1)(b), 11(H)(1)(c), 11(H)(2)(b), 11(H)(2)(c) or 11(I)(1)(a) of the excise tariff.

1.63 Gasoline on which customs or excise duty has been paid, and recovered by a process not being a process of refining, has been classified to subparagraph 11(I)(1)(a). This was designed to refer to gasoline recovered by a recycling process from waste oil where it is a diluent. In accordance with government policy, assistance to encourage oil recycling is now delivered through the Product Stewardship (Oil) Programme, rather than through excise arrangements.

1.64 The current subparagraphs for gasoline, other than gasoline recovered by recycling, include lead content and container size classifications. The differential excise for lead content was implemented to encourage the introduction of unleaded petrol. Now that leaded fuel can only be sold in very limited circumstances the classification is

redundant. The classification according to container size is also redundant.

1.65 As these subparagraphs are repealed, gasoline is classified to subitem 10.5 of the excise tariff, attracting duty at a rate of $0.38143 per litre. ***[Schedule 1, item 45, subitem 10.5 in the table]***

Gasoline for use as fuel in aircraft subitem

1.66 Gasoline for use as fuel in aircraft (also known as aviation gasoline or avgas) has been classified to current subparagraph 11(H)(1)(a) or 11(H)(2)(a) of the excise tariff. These classifications incorporate a container size classification, which is redundant.

1.67 As these subparagraphs are repealed, gasoline for use as fuel in aircraft is classified to subitem 10.6 of the excise tariff, attracting duty at a rate of $0.02854 per litre. ***[Schedule 1, item 45, subitem 10.6 in the table]***

1.68 Excise on aviation fuels is not imposed for general revenue raising reasons but as a method of cost recovery for various services and oversight of the aviation industry (see paragraphs 1.128 to 1.130).

Blends of gasoline and ethanol subitem

1.69 Blends of fuel have been classified to current item 12 of the excise tariff. Given the Government's biofuels policy and the linkages to national fuel standards made under the *Fuel Quality Standards Act 2000*, it is desirable that where biofuels are put into the market as blends, these blends are reported. The excise duty applicable to the blend is calculated by reference to section 6G of the Excise Tariff Act. This reflects the fact that in many cases, the fuel ethanol or gasoline may be manufactured by different parties and one of the products used in blending may have already paid excise.

1.70 Blends of gasoline and ethanol are the principal way in which fuel ethanol reaches the market and accordingly are classified to subitem 10.7 of the excise tariff as current item 12 is repealed. ***[Schedule 1, item 45, subitem 10.7 in the table]***

Diesel (other than biodiesel) subitem

1.71 Diesel (also known as automotive diesel oil, marine diesel, industrial diesel fuel or distillate) has been classified to current paragraph 11(C)(1), 11(C)(2) or 11(C)(3) of the excise tariff.

1.72 Diesel on which customs or excise duty has been paid, recovered by a process not being a process of refining, has been classified to current paragraph 11(C)(3) of the excise tariff. This is intended to refer to diesel recovered by a recycling process from waste oil where it is a diluent. In accordance with Government policy, assistance to directly encourage oil recycling is now delivered through the Product Stewardship (Oil) Programme, rather than through excise arrangements.

1.73 The current classification for diesel, other than diesel recovered by recycling, incorporates classifications for sulphur content. The differential excise for sulphur content was implemented as part of *Measures for a Better Environment* to encourage the introduction of diesel with a sulphur content not exceeding 50 parts per million, known as ultra low sulphur diesel. Since 1 January 2006 diesel exceeding 50 parts per million of sulphur can only be sold in very limited circumstances. The classification for sulphur content is therefore now redundant.

1.74 As the current paragraphs are repealed, diesel (other than biodiesel) is classified to new subitem 10.10 of the excise tariff, attracting duty at a rate of $0.38143 per litre. Because of the provisions of the fuel item, this includes diesel manufactured or produced from any feedstock (other than where the product meets the definition for 'biodiesel'). ***[Schedule 1, item 45, subitem 10.10 in the table]***

1.75 Fuel produced though processes that incorporate non-petroleum inputs but produce fuel that is indistinguishable from other diesel are classified here.

Blends of diesel and ethanol and blends of diesel and biodiesel subitems

1.76 Blends of fuel have been classified to current item 12 of the excise tariff. Given the Government's biofuels policy and the linkages to national fuel standards made under the *Fuel Quality Standards Act 2000*, it is desirable that where biofuels are put into the market as blends, these blends are reported accordingly. The excise duty applicable to the blend is calculated by reference to section 6G of the Excise Tariff Act. This reflects the fact that in many cases, the products used in blending may be manufactured by different parties and one of the products used in blending may have already paid excise.

1.77 Blends of diesel and ethanol are one way in which fuel ethanol may reach the market. These blends will be classified to subitem 10.11 of the excise tariff when current item 12 is repealed by this Bill. ***[Schedule 1, item 45, subitem 10.11 in the table]***

1.78 Blends of diesel and biodiesel are the principal way in which biodiesel may reach the market and accordingly are classified to

subitem 10.12 when current item 12 is repealed by this Bill. ***[Schedule 1, item 45, subitem 10.12 in the table]***

Heating oil subitem

1.79 Heating oil has been classified to current subparagraph 11(B)(2)(a), 11(B)(2)(aa), 11(B)(2)(b), 11(B)(2)(c), 11(B)(2)(d) or 11(B)(2)(e) of the excise tariff, depending on the intended use. Classification according to sulphur content is also in place for revenue protection reasons, given that such a determinant applies in the case of diesel. The classification according to sulphur content is now redundant.

1.80 As these subparagraphs are repealed, heating oil is classified to subitem 10.15 of the excise tariff, attracting duty at a rate of $0.38143 per litre. ***[Schedule 1, item 45, subitem 10.15 in the table]***

1.81 Under fuel tax reform, all of the current mechanisms for delivering fuel tax-free treatment for petroleum products are removed by 30 June 2006 and from 1 July 2006 fuel tax applies to all petroleum products. Section 41-5 of the Fuel Tax Bill 2006 provides that a business is entitled to claim a fuel tax credit for taxable fuel that they acquire or manufacture in, or import into, Australia that they propose to use in carrying on their enterprise. Where heating oil has been entered against subitem 10.15 of the excise tariff, it is eligible for a fuel tax credit in such circumstances.

1.82 The principal use of heating oil is for the heating of buildings, particularly private residences, in colder areas. So that private users of heating oil do not have to enter the fuel tax credit system, section 41-10 of the Fuel Tax Bill 2006 provides that a business is entitled to claim a fuel tax credit for a taxable supply of kerosene or heating oil to a private entity in circumstances where they have a reasonable belief that the fuel will be used for home heating.

Kerosene (other than for use as fuel in aircraft) subitem

1.83 Kerosene other than for use as fuel in aircraft has been classified to current subparagraph 11(B)(1)(a), 11(B)(1)(aa),11(B)(1)(b) or 11(B)(1)(c) of the excise tariff when packaged in containers not exceeding 210 litres. When packaged in containers exceeding 210 litres, it has been classified to subparagraph 11(B)(2)(a), 11(B)(2)(aa), 11(B)(2)(b), 11(B)(2)(c), 11(B)(2)(d) or 11(B)(2)(e), depending on the intended use. Classification according to sulphur content is also in place for revenue protection reasons, given that such a determinant applies in the case of diesel. The classification according to sulphur content is now redundant.

1.84 As the current subparagraphs are repealed, kerosene other than for use as fuel in aircraft is classified to subitem 10.16, attracting duty at a rate of $0.38143 per litre. ***[Schedule 1, item 45, subitem 10.16 in the table]***

1.85 Under fuel tax reform, all of the current mechanisms for delivering fuel tax-free treatment for petroleum products are removed by 30 June 2006 and from 1 July 2006 fuel tax applies to all petroleum products. Section 41-5 of the Fuel Tax Bill 2006 provides that a business is entitled to claim a fuel tax credit for taxable fuel that they acquire or manufacture in, or import into, Australia that they propose to use in carrying on their enterprise. Where kerosene has been entered against subitem 10.16 of the excise tariff, it is eligible for a fuel tax credit in such circumstances.

1.86 So that private users of kerosene do not have to enter the fuel tax credit system, section 41-10 of the Fuel Tax Bill 2006 provides that a business is entitled to claim a fuel tax credit for a taxable supply of kerosene or heating oil to a private entity in circumstances where they have a reasonable belief that the fuel will be used for home heating.

1.87 Kerosene is more often supplied in packaged form for domestic purposes such as heating or for use as a solvent. Section 41-10 of the Fuel Tax Bill 2006 provides that a business is entitled to a fuel tax credit if they package kerosene to make a taxable supply of the fuel for use other than in an internal combustion engine. The fuel must be packaged in containers of a size to be prescribed in regulations. It is intended that regulations will prescribe a maximum size of containers for this purpose as 20 litres. This will mean that packaged kerosene for use by private parties will be effectively excise free.

Kerosene for use as fuel in aircraft subitem

1.88 Kerosene for use as fuel in aircraft (also known as aviation kerosene, aviation turbine fuel, avtur or Jet A1) has been classified to current subitem 11(A) of the excise tariff.

1.89 As subitem 11(A) is repealed by this Bill, kerosene for use as a fuel in aircraft is classified to subitem 10.17 of the excise tariff, attracting duty at a rate of $0.02854 per litre. ***[Schedule 1, item 45, subitem 10.17 in the table]***

1.90 Excise on aviation fuels is not imposed for general revenue raising reasons but as a method of cost recovery for various services and oversight of the aviation industry.

Fuel oil subitem

1.91 Fuel oil has been classified to current subitem 11(D) of the excise tariff. For revenue protection reasons, the product must have certain characteristics for it to be classified to this item. These essentially means that fuel oil is unsuitable for use as a fuel in certain internal combustion engines that would normally use a fuel such as diesel.

1.92 As current subitem 11(D) of the excise tariff is repealed by this Bill, fuel oil is classified to subitem 10.18, attracting duty at a rate of $0.38143 per litre. ***[Schedule 1, item 45, subitem 10.18 in the table]***

1.93 The definition of 'fuel oil' is no longer required for revenue protection reasons, as the excise rate is identical to the fuels for which it can substitute.

1.94 Under fuel tax reform, all of the current mechanisms for delivering fuel tax-free treatment for petroleum products is removed by 30 June 2006 and from 1 July 2006 fuel tax applies to all petroleum products. Section 41-5 of the Fuel Tax Bill 2006 provides that a business is entitled to claim a fuel tax credit for taxable fuel that they acquire or manufacture in, or import into, Australia that they propose to use in carrying on their enterprise. Where fuel oil has been entered against subitem 10.18 of the excise tariff, it is eligible for a fuel tax credit in such circumstances.

1.95 Fuel oil is used by large ships, particularly those engaged in international trade. Fuel oil used on international voyages continues to be free of excise (or customs duty) under existing legislative provisions.

Denatured ethanol for use as fuel in an internal combustion engine subitem

1.96 Denatured ethanol for use as fuel in an internal combustion engine (also known as fuel ethanol) has been classified to current subitem 11(K).

1.97 As current subitem 11(K) of the excise tariff is repealed by this Bill, denatured ethanol for use as fuel in an internal combustion engine is classified to subitem 10.20, attracting duty at a rate of $0.38143 per litre. ***[Schedule 1, item 45, subitem 10.20 in the table]***

1.98 While blends of gasoline and ethanol are the principal way in which fuel ethanol reaches the market, the fuel ethanol or gasoline may be manufactured by different parties. Where fuel ethanol is produced by one licensed excise manufacturer and sold to another licensed excise manufacturer for use in blending, the fuel ethanol is denatured and entered

into home consumption by the first manufacturer. The blend so produced may be classified to subitem 10.7 (blends with gasoline) or subitem 10.11 (blends with diesel). The excise duty applicable to the blend is calculated by reference to section 6G of the Excise Tariff Act.

1.99 In certain limited cases, fuel ethanol may be used directly in engines that would otherwise operate on diesel. In these circumstances, the fuel ethanol entered against this item is used directly without further blending.

Biodiesel

1.100 Biodiesel has been classified to current subitem 11(L) of the excise tariff. As subitem 11(L) of the excise tariff is to be repealed by this Bill, biodiesel is classified to subitem 10.21 of the excise tariff, attracting duty at a rate of $0.38143 per litre. ***[Schedule 1, item 45, subitem 10.21 in the table]***

1.101 Current section 3 of the Excise Tariff Act defines 'biodiesel' as fuel that is:

- for use in an internal combustion engine; and
- manufactured by chemically altering vegetable oils or animal fats (including recycled oils from these sources) to form mono-alkyl esters.

1.102 It is no longer necessary to stipulate that biodiesel is for use in an internal combustion engine. Section 41-5 of the Fuel Tax Bill 2006 provides that a business is entitled to claim a fuel tax credit for taxable fuel that they acquire or manufacture in, or import into, Australia that they propose to use in carrying on their enterprise. Biodiesel is eligible for a fuel tax credit in such circumstances at a time when it incurs effective fuel tax.

1.103 Accordingly, the definition of 'biodiesel' is amended so that it means liquid fuels manufactured by chemically altering vegetable oils or animal fats to form mono-alkyl esters. ***[Schedule 1, item 2]***

Liquid aromatic hydrocarbons, mineral turpentine and white spirit subitems

1.104 The excise tariff includes the following items:

- liquid aromatic hydrocarbons, consisting principally of benzene, toluene and xylene or mixtures of them ***[Schedule 1, item 45, subitem 10.25 in the table]***;

- mineral turpentine ***[Schedule 1, item 45, subitem 10.26 in the table]***; and

- white spirit ***[Schedule 1, item 45, subitem 10.27 in the table]***.

1.105 Benzene, toluene and xylene are aromatic compounds, that is, they have a particular chemical structure and were originally so named because of a characteristic sickly sweet odour. Aromatics are normal constituents in gasoline and provide a valuable contribution to achieving the required octane rating in gasoline. The octane number of a hydrocarbon or mixture of hydrocarbons is effectively a measure of their combustion efficiency and smoothness in a spark ignition engine. Benzene, toluene and xylene are also widely used as chemicals in the production of paints, solvents and other materials that are used other than as fuel.

1.106 Turpentine is a solvent originally prepared from natural extracts of pine and other trees. A substitute product made from petroleum sources is known as mineral turpentine.

1.107 White spirit is a mixture of hydrocarbons in the boiling range between 150 and 200 degrees Celsius and used as a solvent for paints and varnishes.

1.108 Products falling within these three categories are normally supplied to businesses by excise manufacturers and accordingly separate classifications have been included in the excise tariff for reporting purposes. These products have been classified to current subparagraph 11(H)(2)(f) of the excise tariff (with a possible rebate or remission of the applicable excise duty available under the excise regulations for certain other uses) or current subparagraph 11(I)(3)(c) of the excise tariff (with a free rate of excise duty as the product is for other use and contains the prescribed proportion of a chemical marker).

1.109 In addition, mineral turpentine and white spirit have been classified to current subparagraph 11(I)(2)(c) (with a free rate of excise duty as the product is for other use and in packages not exceeding 210 litres). This covers the circumstance where mineral turpentine and white spirit is sold in hardware and other stores in small containers which may be for use by non-business parties.

1.110 Under fuel tax reform, all of the current mechanisms for delivering fuel tax-free treatment for petroleum products, including free

items in the excise tariff and remissions and refunds, are removed by 30 June 2006 and from 1 July 2006 fuel tax applies to all petroleum products. Effective fuel tax-free treatment for these products where used other than as a fuel is delivered by a fuel tax credit to either the user of the fuel, or at another point in the supply chain, depending on whether the use is business or private.

1.111 Section 41-5 of the Fuel Tax Bill 2006 provides that a business is entitled to claim a fuel tax credit for taxable fuel that they acquire or manufacture in, or import into, Australia that they propose to use in carrying on their enterprise. Where benzene, toluene and xylene are used other than as fuel in an internal combustion engine by a business, a fuel tax credit applies. Effective fuel tax-free treatment for these products where used other than as a fuel is delivered by a fuel tax credit to either the user of the fuel, or at another point in the supply chain, depending on whether the use is business or private.

Petroleum products (other than blends) not elsewhere included subitem

1.112 A subitem in the excise tariff applies to petroleum products that are not covered elsewhere in the excise tariff. For example, diesel and gasoline are covered elsewhere so they are not products that are classified in this subitem. Some intermediate products of petroleum refining that cannot be identified under another item would be classified here. ***[Schedule 1, item 45, subitem 10.28 in the table]***

Blends subitem

1.113 Subitem 10.30 in the excise tariff applies to blends that can be used as fuel in an internal combustion engine ***[Schedule 1, item 45, subitem 10.30 in the table]***. This test is a practical, objective test of whether the blend can be used in an internal combustion engine, not whether the blend is designed or intended to be used in that way. For example, paint can be manufactured by blending toluene (subitem 10.25) with other substances including pigments. An objective test says that paint cannot be used in an internal combustion engine. Paint is therefore not classified to subitem 10.30 (or any other item).

1.114 The blends can consist of one of the subitems of item 10, blended with one or more other substance or blends of two or more of the subitems of item 10 with or without other substance. It also covers blends that consist of goods that were themselves classified to subitem 10.30 and are then subsequently blended with other substances. To be covered by subitem 10.30 that blend itself must have contained goods classified to one of the other subitems of item 10.

Lubricating oils and greases

1.115 Item 15 of the excise tariff replaces the current item 15. Alterations have only been made to the presentation, without changing the scope of the products which are taxed as part of the Product Stewardship (Oil) Programme. 'Lubricants/fluid/oil products' are defined in a commencing note of the excise tariff (see paragraph 1.16). ***[Schedule 1, items 45 and 15 in the table]***

1.116 Items 20 and 21 in the excise tariff replace current item 17. Alterations have only been made to the presentation, without changing the scope of the products covered. ***[Schedule 1, item 45, items 20 and 21 in the table]***

Omissions from the excise tariff

1.117 There are currently a number of items and subitems in the excise tariff which provide a free rate of duty where products are to be used by certain parties. This means that classification to these current items and subitems is dependent on the intended use of the relevant products rather than the nature of these products alone.

1.118 To promote the excise tariff being concerned, as far as possible, with the classification of goods with a view to taxing them, the following items are omitted, with any continuance of duty-free treatment to be delivered (other than where redundant as indicated) through circumstances in regulations (see paragraph 2.83):

- current subitem 9(A) — tobacco products for use in approved medical or other scientific research programme;
- current subitem 10(A) — goods for use by government agencies or an authority or body established for a Commonwealth purpose (this is redundant and will not be transferred elsewhere);
- current subitem 10(B) — articles for official use by the Governor-General or the Governor-General's family;
- current subitem 10(C) — articles for official use by a state Governor or state Governor's family;
- current subitem 10(F) — goods for official use of an international organisation established by agreement with Australia, or for official or personal use by an official of such an organisation;

- current subitem 13(A) — goods for official use by the government of a country other than Australia;

- current subitem 13(B) — goods for use by or sale to persons covered by a Status of Forces of Agreement with Australia;

- current item 18 — ale, porter and other beer, brandy, whisky, rum, gin, liqueurs, tobacco, cigars and cigarettes for consumption by the personnel of sea-going vessels of the Royal Australian Navy or Australian Military Forces when such vessels are in full commission and when consumed on such vessels;

- current item 19 — ships' stores for use on board a ship by passengers and crew of the ship, for a certain period of 1968 and subject to certain other requirements (is redundant as ships' stores are exempt excise duty through provisions in the Excise Act); and

- current item 21 — excisable goods purchased from an inwards duty-free store.

1.119 Under the excise tariff, coal is omitted rather than included at a free rate of excise duty. The *Coal Excise Act 1949* (Coal Excise Act) which contains licensing and other requirements, is repealed (see paragraph 2.117).

Other amendments to the Excise Tariff Act

Repeal of fuel penalty surcharge scheme

1.120 The operation of the fuel penalty surcharge scheme under the *Fuel (Penalty Surcharges) Administration Act 1997*, the *Fuel Blending (Penalty Surcharge) Act 1997*, the *Fuel Misuse (Penalty Surcharge) Act 1997* and the *Fuel Sale (Penalty Surcharge) Act 1997* is currently dependent on the use of a chemical marker to identify petroleum products entered for use as a fuel other than in an internal combustion engine, or entered duty-free for use other than as fuel. The fuel penalty surcharge scheme also imposes significant record keeping obligations on affected industry.

1.121 These Acts are repealed (see paragraph 2.135). Certain provisions within the Excise Tariff Act which relate to the chemical marker no longer serve a purpose and are therefore to be repealed. Specifically these provisions are:

- the definition of 'marker' within subsection 3(1) which refers the a chemical additive prescribed for the purposes of section 5C to be a fuel marker ***[Schedule 1, item 5]***; and

- sections 5C and 5D which contain requirements relating to the use of a chemical additive as a fuel marker ***[Schedule 1, item 7]***.

Repeal of the Coal Excise Act and Distillation Act

1.122 The Coal Excise Act, which contains licensing and other requirements, is repealed (see paragraph 2.117). The Distillation Act is also repealed as most of the provisions it currently contains are no longer relevant to the effective management of Australia's alcohol taxation regime (see paragraph 2.119). This necessitates an amendment to section 2 of the Excise Tariff Act, which lists Acts to be read as one with it, to remove the Coal Excise Act and Distillation Act. ***[Schedule 1, item 1]***

Changes to indexation provision

1.123 This measure repeals current section 6AAA of the Excise Tariff Act which affected the indexation of excise rates for nominated periods in 1994 and 1995 ***[Schedule 1, item 21]***. Subsequent periods for indexation of excise rates are unaffected by the provision. As a consequence of repealing section 6AAA, further amendments remove references to this section. ***[Schedule 1, items 10 to 13, and 15 to 20]***

1.124 The definition of 'relevant rate' in subsection 6A(1) of the Excise Tariff Act specifies rates which are subject to indexation and currently refers to a rate of duty (other than a free rate) specified in an item, subitem, paragraph or subparagraph of the excise tariff other than subitem 1(BB) and items 17 and 20. As the excise tariff only includes items and subitems, the reference to paragraphs and subparagraphs is omitted from this definition, along with the reference to item 20 (which is coal) which will no longer appear in the excise tariff (see paragraph 1.119). The reference to the non-commercial beer subitem 1(BB) will also be omitted as this is to become subject to indexation in its own right rather than being dependent on the rate for another subitem (see paragraph 1.22). ***[Schedule 1, item 8]***

Changes to calculations of duty payable on fuel blends

1.125 This measure repeals complex provisions that are needed to provide the calculation of the duty payable where fuel is blended with other fuel or other substances. The current provisions are complex, in part, because of the different duty rates given to fuel in the excise tariff. As a result of the amendments to the fuel items in the excise tariff, the

provisions no longer need to be as complex. The total volume of the blend is subject to duty at the rate applicable to fuel that is not aviation fuel (ie, 38.143 cents per litre). Subtracted from that figure is any duty (whether customs duty on imported fuels or excise duty on excisable fuels) that has been previously paid on the components of the blend. Where water is deliberately added as a component of the blend the volume of water can be disregarded in calculating the volume of the blend. This can occur in the production of emulsified diesel/water blends (sometimes known as 'aquadiesel') which are claimed to have cleaner burning properties than straight diesel. This does not exclude water that might otherwise be present in the fuel, for example because of the hygroscopic nature of the fuel. ***[Schedule 1, item 26]***

Repeal of substitutes provision

1.126 Current section 7 of the Excise Act provides that where the Minister is of the opinion that manufactured goods are intended or can be used as a substitute for excisable goods, the Minister can direct that they be charged with excise duty if certain processes are followed. This is repealed as it is not relied on in practice and it is more desirable from policy and legislative perspectives to explicitly state in the excise tariff which goods are excisable. ***[Schedule 1, item 27]***

Validation of excise tariff proposal for aircraft fuel

1.127 The duty rate for kerosene for use as a fuel in an aircraft and a gasoline for use as fuel in an aircraft is set at $0.02854 per litre from 1 November 2005.

1.128 Prior to 1 November 2005 the excise rate on aviation fuels comprised two elements. One element contributed towards budget funding for the Civil Aviation Safety Authority (and continues to do so) and the second element was used to fund the Location Specific Pricing Subsidy provided to Airservices Australia.

1.129 The purpose of the Location Specific Pricing Subsidy was to limit the effect of location specific pricing at smaller airports where low traffic volume limits the ability to meet the real cost of air traffic control services.

1.130 In the 2004-05 Budget, the Government announced that it would continue the Location Specific Pricing Subsidy for 2004-05 only, to enable Airservices Australia to move towards longer term pricing arrangements for providing terminal navigation services by 1 July 2005. The announcement also indicated that the Location Specific

Pricing Subsidy would continue to be funded from revenue raised from excise and customs duty on aviation fuels up to 31 October 2005.

1.131 Consequently, the Government reduced the excise and customs duty rates on aviation gasoline and aviation turbine fuel, with effect from 1 November 2005. The excise rate was equalised at $0.02854 per litre by the *Excise Tariff Proposal No. 1 (2005)*. This Bill validates the proposal. ***[Schedule 1, items 42 to 44]***

Application and transitional provisions

Commencement

1.132 The amendments in Schedules 1 and 2 to the Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006 commence on 1 July 2006 with the exception of the validation of the excise tariff proposal for aircraft fuel (see paragraph 1.131) which commences on 1 November 2005. While this date has passed, the operation of the relevant provisions are not retrospective as they validate a tariff proposal which operated prospectively.

Transitional provisions

1.133 Changes are made to the provisions for calculating the duty on blended fuels (see paragraph 1.125). A savings provision means that duty previously paid under fuel items in the excise tariff before the amendments take effect are taken into account when deducting 'previously paid duties'. ***[Schedule 1, item 46]***

1.134 This measure inserts the power for the Governor-General to make regulations prescribing matters of a transitional nature (including prescribing any savings or application provisions) relating to the amendments made by the Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006. The regulations under this section will cover the transition of approvals for concessional spirits until 31 December 2006 to the new provisions which allow spirits to be entered under excise tariff subitems 3.5 to 3.8. ***[Schedule 1, item 47]***

Consequential amendments

Changes to references to the excise tariff

1.135 The inclusion of a revised number system in the excise tariff means that a number of references to current classifications within the Excise Tariff Act will need to be updated to reflect the equivalent classifications within the revised excise tariff. This type of amendment will be made to the following provisions:

- the definitions of 'delayed-entry oil', 'intermediate oil' and 'new oil' in subsection 3(1) ***[Schedule 1, items 3, 4 and 6]***;
- paragraphs 6A(1A)(a) and (b) which relate to indexation of rates of duty for certain items in the excise tariff ***[Schedule 1, item 9]***;
- the definition of 'old oil' in subsections 6B(1) and 6B(10) which relate to duties applicable to certain stabilised crude petroleum oil ***[Schedule 1, items 22 and 23]***;
- subsection 6C(10) which relates to duties applicable to certain stabilised crude petroleum oil ***[Schedule 1, item 24]***;
- subsection 6D(10) which relates to duties applicable to certain stabilised crude petroleum oil ***[Schedule 1, item 25]***; and
- the commencing note to the excise tariff that excludes from the excise tariff, liquor that has been produced for non-commercial purposes, using non-commercial equipment and facilities subject to the liquor not containing distilled spirit (ie, home brew production of alcoholic beverages such as home brew beer) ***[Schedule 1, item 40]***.

1.136 Currently, the excise tariff includes items, subitems, paragraphs and subparagraphs. As the excise tariff will only include items and subitems, a change is required to subsection 6A(4D) of the Excise Tariff Act to exclude references to paragraphs and subparagraphs. ***[Schedule 1, item 14]***

Chapter 2
Excise laws amendments

Outline of chapter

2.1 Schedule 1 to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006 amends the *Excise Act 1901* (Excise Act), and makes consequential amendments to a number of other Acts, to implement a number of measures to streamline existing excise arrangements, protect the revenue and promote best practice regulation. It also amends the *Energy Grants (Cleaner Fuels) Scheme Act 2004* so that a biofuel manufactured through a process of hydrogenating vegetable oils or animal fats receives the same tax treatment as biodiesel.

2.2 Schedule 2 to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006 repeals the *Coal Excise Act 1949* (Coal Excise Act), the *Distillation Act 1901* (Distillation Act), the *Fuel Blending (Penalty Surcharge) Act 1997*, the *Fuel Misuse (Penalty Surcharge) Act 1997*, the *Fuel (Penalty Surcharges) Administration Act 1997*, the *Fuel Sale (Penalty Surcharge) Act 1997* and the *Spirits Act 1906* (Spirits Act) which are no longer required.

Context of amendments

2.3 In the energy white paper, *Securing Australia's Energy Future*, the Government announced a major programme of reform to modernise and simplify the fuel tax system. The reform programme will commence on 1 July 2006, with the introduction of a single fuel tax credit system to replace the current complex system of fuel tax concessions.

2.4 The changes will lower compliance costs, reduce tax on business and remove the burden of fuel tax from thousands of individual businesses and households. Under fuel tax reform the effective application of fuel tax will be limited to:

- business use of fuel in on-road applications in motor vehicles with a gross vehicle mass of 4.5 tonnes or less;
- business use of fuel on-road in motor vehicles with a gross vehicle mass of more than 4.5 tonnes (with the exception of a

carve-out intending to preserve previous entitlements for eligible fuel use in vehicles with a gross vehicle mass of 4.5 tonnes) but only to the extent of the road-user charge;

- private use of fuel on-road in motor vehicles and in certain off-road applications; and

- aviation fuels (where tax is imposed for cost recovery reasons).

2.5 The Fuel Tax Bill 2006 combines in one piece of legislation, the means of providing fuel tax relief to businesses and households. It is intended that from 1 July 2011, this Bill will also provide the legislative basis for taxing certain liquefied and compressed gaseous fuels, when fuel tax is levied on liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG) for the first time.

2.6 This system — taxing and crediting — is necessary to deal with the fact that currently fuel tax is paid under excise and customs duty legislation by the manufacturer or importer of the fuel, generally well before its eventual use (whether in a private vehicle or otherwise). Therefore, the fuel tax is levied under current arrangements on the assumption that the fuel could be used in a taxable way, and credits are allowed to reverse the effect of the tax when it becomes clear that the fuel will be put to a non-taxable use covered by the legislation.

2.7 Among other things, under the new arrangements the fuel tax currently levied on burner fuels (products used as a source of external heat rather than for powering an internal combustion engine, such as fuel oil, heating oil and kerosene) will be effectively removed from 1 July 2006. This will be achieved by such fuels being subject to the same excise rate as fuels used in transport applications (other than aviation fuels) with an offsetting fuel tax credit available for eligible users. It was also announced that the new fuel tax credits system will replace all existing rebates and subsidies and in this context, subsidies include concessional and free rates of excise duty.

2.8 The current Schedule to the *Excise Tariff Act 1921* (excise tariff) sets out the rate of excise applicable to certain products. It has been amended a number of times over many years, and developed in an ad hoc fashion. As a result it contains redundant items and items that are unnecessarily complex and difficult to understand. As set out above, to implement the effective removal of excise duty from burner fuels, amendment to the excise tariff is needed. This need and the introduction of a number of fuel tax reforms on 1 July 2006 provided an opportunity to review the excise tariff more generally, with a view to reducing

compliance costs for excise manufacturers, importers and administering authorities.

2.9 As a result of this review process, a number of measures were identified which would streamline existing excise arrangements, protect the revenue and promote best practice regulation. These measures, along with certain other changes required as a result of the new excise tariff, are legislated in the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006.

Summary of new law

2.10 Schedule 1 to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006 contains legislative provisions to implement the following amendents:

- clarification of the arrangements for imported inputs to excise manufacture;
- the introduction of streamlined provisions to govern concessional spirits to reduce the administrative burden on users and protect the revenue where product is unable to be satisfactorily accounted for;
- establishment of common validity periods for all excise licences and inclusion of additional factors that the Commissioner of Taxation or an authorised person (Collector) may take into account when granting or suspending such licences;
- the introduction of provisions to allow rules to be put in place to govern the measurement of excisable goods;
- the repeal of provisions which are inconsistent with best practice regulation, including Acts which are no longer required;
- a number of minor measures to promote clarity;
- provision of a cleaner fuel grant for a biofuel manufactured through a process of hydrogenation; and
- a number of minor measures to protect the revenue.

Comparison of key features of new law and current law

New law	*Current law*
The requirement to prescribe circumstances where excisable and imported inputs may be used in excise manufacture will be removed. The ability to prescribe if necessary will be retained.	Excisable and imported inputs to excise manufacture may be used only in prescribed circumstances and subject to prescribed conditions.
Fuel blending is considered blending unless the resulting blend is carved out. A new section of the Excise Act will specify fuel blends that are not captured by the excise tariff. If blending results in a product that can not be used as a fuel, it will be carved out, either directly or via a determination under the Fuel Tax Bill 2006.	Fuel blending is considered excise manufacture except in circumstances listed as exempt in the regulations.
Regulations can be made to limit movement permissions granted by the Commissioner of Taxation (CEO) where duty has not been paid (on fuel).	The CEO can give permission for excisable goods on which duty has not been paid to be moved from one place to another place.
All excise licences expire. When first issued the expiry date is 31 March, two years after the initial issue with continuation permitted pending a decision to renew. Renewal is for three years. Additional guidance is provided to the CEO when considering applications for licences.	There are inconsistent validity periods for different classes of excise licences. For example, manufacturer licences expire each year, while others such as tobacco growers' licences have no expiry date.
A streamlined provision will enable rules to be determined for measuring the volume, weight or alcoholic strength of an excisable good.	Complex provisions govern the measurement of volume and strength of beer and alcoholic beverages only.
To protect the revenue, all persons who have had possession, custody or control of tobacco leaf can be asked to satisfactorily account for it and pay an amount equal to the excise duty that would have been paid had the deficient leaf been manufactured into excisable tobacco.	Producers and dealers can be asked to account for tobacco leaf and pay excise duty on any deficiencies.
To protect the revenue, bottling of	Bulk beer can be entered for home

New law	***Current law***
duty-paid bulk beer is excise manufacture to prevent lower excise liability applying.	consumption and then repackaged to pay a lower rate of duty.
The concessional spirits scheme is streamlined to reduce the administrative burden on users of concessional spirits and protect the revenue where concessional spirits are unable to be satisfactorily accounted for.	Complex provisions govern concessional spirits (including provisions governing uses, permissions, obligations of users and formulations).
In addition to remissions, rebates and refunds being allowed in prescribed circumstances, regulations may be made for and in relation to the CEO granting approvals for such circumstances.	Remissions, rebates and refunds are allowed in circumstances prescribed by regulations.
The recovery of debts under section 60 of the Excise Act is covered by the *Taxation Administration Act 1953*.	There are recovery provisions specific to debts under section 60 of the Excise Act.
All licence holders can be directed to keep, retain and produce records by the CEO.	Licensed producers and dealers are required to keep prescribed accounts and make prescribed returns. Other licence holders can be directed by the CEO to keep, retain and produce records.
A definition of ***renewable diesel*** in the *Energy Grants (Cleaner Fuels) Scheme Act 2004* to mean liquid fuel manufactured from vegetable oil or animal fats by a process of hydrogenation is inserted.	Not covered by current law.
Provisions and certain Acts which are redundant or inconsistent with best practice regulation are repealed.	Provisions and Acts which are inconsistent with best practice regulation, such as provisions which are not enforced, are overly prescriptive or apply to lapsed time periods, are present.

Detailed explanation of new law

Arrangements for the use of excisable goods and imported excise equivalent goods in excise manufacture

2.11 This measure clarifies arrangements for the use of excisable goods or goods liable to duties of customs in the manufacture of excisable goods. The clarification is necessary to ensure that legitimate use of these goods in excise manufacture is allowed within the wider excise and customs compliance frameworks, in which there are penalties for moving, altering and/or interfering with goods under excise or customs control.

2.12 Existing legislation provides that excisable goods or goods liable to duties of customs, or both excisable goods and goods liable to duties of customs, may in prescribed cases and subject to the prescribed conditions, while subject to control of the Customs or the CEO, be used in the manufacture of excisable goods. This continues to be the case, with some modifications.

2.13 Under current legislative arrangements, where imported products are identical in nature to locally manufactured excisable products, a portion of customs duty is imposed at a rate equivalent to the excise that would have applied had the product been locally manufactured (the customs duty may also have an *ad valorem* component). In many cases, such imported products are entered into home consumption from customs control in the same state as when they are imported (ie, they remain unchanged). In this case no excise manufacture has occurred. In other cases, the goods are used as inputs to the manufacture of excisable goods. For example, once landed in Australia imported bourbon whiskey, subject to customs duty, may be utilised to manufacture bourbon and cola which is an excisable product.

2.14 The requirement for cases and conditions to be exhaustively prescribed is removed. There will no longer be a requirement that such conditions be prescribed to give effect to the primary legislation, but the ability to prescribe cases and conditions where necessary is retained. ***[Schedule 1, item 23, subsection 24(3)]***

2.15 With respect to fuel, regulations are envisaged that will maintain current arrangements where excisable products are blended with imported equivalents other than where this is contrary to the principle that business users will pay duty and claim a fuel tax credit for their use of fuel. This will, for example, allow imported petrol to be blended with petrol and the resulting blend then will be dealt with through the excise system.

2.16 The concept of control is also clarified ***[Schedule 1, item 23, subsections 24(1) and (2)]***. The existing requirement that goods, while subject

to control of the Customs or the CEO, can be used in excise manufacture could be interpreted as meaning the imported goods used as inputs to excise manufacture are subject to the control of the CEO. This is because imported goods are physically located on a premise licensed under the Excise Act. This is not the case. Section 30 of the *Customs Act 1901* (Customs Act) provides that imported goods are under the control of Customs until certain events occur. To ensure such goods are under control of the Customs, following importation they are transferred to a warehouse licensed under section 79 of the Customs Act. The Customs Act is being amended to clarify that excise manufacture may occur in a Customs warehouse and to ensure that Customs control of goods continues until such a time that an excise liability has been created as a result of a step in excise manufacture.

2.17 It is recognised that this has implications for business in terms of requiring sites where excise manufacture occurs, utilising imported inputs, to be licensed under both excise and Customs legislation. Given the nature of the Customs legislation, there is no alternative if revenue protection is to be achieved in these circumstances. This is already the case for the use of alcohol and tobacco in the manufacture of excisable products. The current legislative arrangements where regulations purport to exempt fuel from this requirement are repealed.

Movement permissions

2.18 This measure ensures that the Government's fuel tax credits system functions as intended. Current law allows the CEO to give permission for excisable goods on which duty has not been paid to be moved from one place to another place. This measure inserts a provision that allows regulations to be made that mean the CEO cannot allow the movement of excisable goods, on which duty has not been paid, in circumstances specified in the regulations ***[Schedule 1, item 59]***. The fuel tax credits system is the method to provide excise relief to eligible business users of fuel. To allow movement of fuel, on which duty has not been paid, where the fuel is for use as an input to produce another product would be contrary to this. There will be some circumstances where movement of fuel will not compromise the operation of the fuel tax credits system. These will be fully explained in the regulations but are intended to allow the movement of:

- fuels, such as gasoline, diesel and biodiesel, through the existing distribution networks of approved places (sites covered by storage licences under the Excise Act). This could include other fuels that are to be blended with diesel to ensure operability in cold weather;

- fuels moving between manufacturers that manufacture the same fuel other than by blending; or

- fuels where the use will be covered by the remission outlined in paragraph 2.87.

Fuel blending and solvent recycling

2.19 The current law provides that, for certainty, blending that produces an 'excisable blended petroleum product' is excise manufacture. What an 'excisable blended petroleum product' is, is established by reference to regulations that prescribe what an 'exempt blended petroleum product' is. The new law does not rely on this two step requirement however for certainty the provision that stipulates that blending is excise manufacture is amended to incorporate the revised arrangement ***[Schedule 1, item 75, section 77G]***. Blending that results in an item that is classifiable to item 10 in the table is excise manufacture.

2.20 Item 10 in the excise tariff includes blends other than blends excluded by the provisions of section 77H of the Excise Act. This is necessary to ensure the blending of fuel items is captured by the excise system to protect the revenue and also ensure the integrity and proper operation of other fuel related matters such as the Energy Grants (Cleaner Fuels) Scheme. This measure inserts a provision in the Excise Act that exempts certain blends from being excisable. As those blends are not excisable, the manufacture of those blends is not subject to the provisions of the Excise Act. ***[Schedule 1, item 75, section 77H]***

2.21 Generally where a blend is manufactured from two or more fuels that have had duty (either customs or excise) paid on them at the same rate then the resulting blend will have had duty already paid at the required rate and so the revenue is not at risk. Where duty has not been paid at the same rate this will result in a blend which is excisable and the duty already paid will be taken into account in calculating the duty payable on the resulting blend.

2.22 Where a component of the blend is biodiesel or fuel ethanol then, notwithstanding that duty has been paid on the components, to maintain the integrity of the manufacture of those fuels in terms of linkages to the Government's biofuels agenda, this blending will need to be carried out by a person licensed under the Excise Act. In particular, currently cleaner fuels grants for biodiesel meeting fuel standards are made under the *Energy (Cleaner Fuels) Grants Scheme Act 2004*, which is also administered by the CEO.

2.23 There are other blending operations that do not cause a risk to the revenue or risk the integrity of other measures. These will be excluded by a written determination by the CEO. This determination is a legislative instrument for the *Legislative Instruments Act 2003*. Excluding blending operations via a legislative instrument prevents the Act from becoming unnecessarily complex. The sorts of blending that could be covered by the determination might include:

- where a person blends two stroke oil with petrol for use in their lawn mower — commercial manufacture of two stroke fuel that consists of blending oil and petrol would not be excluded;

- incidental blending in a service station fuel tank, where a road tanker might unload a type of fuel into a tank that has had a different type of fuel in it and there are remnants of fuel still in the service station tank; and

- incidental blending in a storage tank that formerly contained diesel. A person may place biodiesel in a tank that formerly contained diesel and still contains remnants of the diesel.

2.24An exclusion is created in the Excise Act so that certain goods manufactured by a recycling process are not classifiable in the excise tariff. Without this exclusion there would be an undesirable outcome in that the recycler would need to pay excise duty on the recycled product but they would also be entitled to a fuel tax credit. This could occur multiple times if the product is recycled multiple times. The exclusion applies in the following circumstances:

- goods are manufactured by recycling goods, that were delivered for home consumption and classified to subitem 10.25, 10.26, 10.27, 10.28 or 10.30 of the excise tariff, and they were used as a solvent;

- they were subjected to a recycling process which means they can be used again as a solvent; and

- the recycling process is carried out by the person who used the goods as a solvent.

[Schedule 1, item 75, section 77J]

2.25 As a result of the above changes the heading to Part VIIB of the Excise Act is amended. ***[Schedule 1, item 65]***

Changes to excise licensing

2.26 This measure strengthens the licensing arrangements to protect the revenue. Protection of the revenue in this context includes amendments to prevent the revenue base being eroded, and also amendments that ensure that appropriate controls exist for individual taxpayers holding an excise licence to make sure that they acquit their excise liabilities appropriately.

2.27 Excise manufacture and related activities, such as storage of excisable goods or the production or dealing in tobacco seed, plant or leaf, are subject to licensing requirements under the Excise Act.

2.28 The licensing provisions of the Act are directed towards controlling commercial operations. It would not be consistent with those controls to grant a licence for the production of excisable goods for personal use. In particular, commercial operations would not include home growing of tobacco, home distillation of spirit or small scale production of biodiesel for personal use.

2.29 In deciding whether or not to grant a licence, the Collector is not limited as to what he or she can take into account but certain things that he or she may take into account are specified in the Act. These factors are consistent with assessing commercial operations as licensing non-commercial operations is not consistent with the provisions of the Excise Act. Factors to be taken into account when suspending or cancelling a licence are similarly specified.

2.30 This measure inserts the following additional factors that can be taken into account by the Collector when deciding to grant or suspend a licence:

- whether the applicant has available to them the skills and experience to conduct the activity for which they are applying to be licensed. The applicant does not need to possess the skills and experience themselves but they could show that they will use another person's skill and experience, for example by hiring them or using a consultant. The Collector can assess that other person's skills and experience ***[Schedule 1, items 27 and 42]***;

- whether the applicant has a market for goods to which the licence relates. At the time of application for a licence, it is expected the applicant will not be undertaking the relevant activities. In assessing the market, the Collector is looking at the market the applicant would have if they were to be licensed. The applicant may provide contracts, business

plans or other documents to demonstrate the market they will have but the Collector is not limited to evidence provided by the applicant ***[Schedule 1, items 28 and 43]***; and

- the applicant's financial resources. In assessing the commercial operation, the Collector can look at how the applicant (as an individual or a company) will fund the operation ***[Schedule 1, items 31, 36, 44 and 45]***.

2.31 Certain factors to be taken into account by the Collector in deciding whether or not to grant or suspend a licence, concern whether the applicant is or comprises of 'fit and proper' persons. This measure broadens the scope of who can be assessed as being a fit and proper person. It includes any person who would be involved in the management or control of the premises in relation to which the licence is sought, rather than being limited to employees of the applicant. This means that people such as consultants and other non-employees are subject to the same scrutiny as employees. ***[Schedule 1, items 26 and 41]***

2.32 In deciding whether a person or company is fit and proper the Collector can have regard to the person or company's compliance with other laws administered by the CEO. This allows the Collector to look at things such as record keeping under other tax laws and whether they have debts that are not being addressed. This will better inform the Collector in coming to an opinion to grant or refuse to grant a licence or in coming to a belief he or she has reasonable grounds to suspend or cancel a licence, particularly in the context of protection of the revenue. ***[Schedule 1, items 30, 35, 44 and 45]***

2.33 This measure also clarifies that if a false or misleading statement is made in an application for a licence, this can be taken into account in determining if the applicant is a fit and proper person. It is not a matter for consideration of other persons who are not the applicant. ***[Schedule 1, items 32 and 33]***

2.34 This measure clarifies that the Collector may take into account certain factors in determining if a person is a fit and proper person. These factors, other than ones directly related to statements made in the application, apply to all natural persons being assessed as a fit and proper person. ***[Schedule 1, items 29 and 34]***

2.35 This measure repeals the current period of validity provisions relating to excise licences and provides that all excise licences have a common period of validity. All excise licences have a three year period of validity and will expire on 31 March. On initial granting of a licence it comes into force on the day it is granted and expires, unless cancelled earlier by other provisions, on the 31 March that next occurs two years

after the licence was granted ***[Schedule 1, item 37]***. The affect of this will be that current licensed dealers, licensed producers and storage licence holders will no longer have a licence that does not expire. They will need to apply for a renewal of their licence every three years. While this imposes a small additional requirement on these licence holders, to ensure the protection of the revenue, it is appropriate to formally review the circumstances of licence holders at regular periods. The effect on holders of manufacturer licences is that they have a small reduction in compliance costs as they move from a one year cycle of renewal to a three year cycle.

2.36 If a licence holder has applied for the licence to be renewed but the Collector has not made a decision on that application before the expiry date (31 March) then the licence continues in force until the decision is made. If the decision to renew the licence is made after 31 March then the renewal is backdated to 31 March so that licence expires on 31 March in three years time. ***[Schedule 1, items 38 to 40]***

Streamlining of measurement provisions

2.37 This measure provides a single set of clear and consistent principles to apply to the measurement of all excisable goods. This is achieved by the insertion of a provision into the Excise Act which allows the CEO to determine rules for measuring the volume or weight in excisable goods and percentage by volume of alcohol in goods containing alcohol. These rules are legislative instruments as they fall within the definition given in section 5 of the *Legislative Instruments Act 2003* defining such an instrument. For clarity, a note is inserted stating that the rules may make different provision with respect to different matters or classes of matters (such as different classes of excisable goods), which is consistent with subsection 33(3A) of the *Acts Interpretation Act 1901*. ***[Schedule 1, item 60, subsection 65(1)]***

2.38 In developing these rules the CEO will consult with business so that the rules provide clarity for business in establishing their liability for excise duty. This will allow for the adoption of relevant industry standards as the methods used.

2.39 The following examples of the matters that these rules may cover are included in the provision:

- specification of sampling methods; and
- permission of minor variations directly attributable to the manufacturing process between the nominated or labelled volume, weight or volume of alcohol and the actual volume, weight or volume of alcohol.

[Schedule 1, item 60, subsection 65(2)]

2.40 These rules replace current section 77B, which contains complex provisions giving the manner of determining volumes of, and fixing duty on beer, and current section 77FB which allows for rules to be made for working out the strength of alcoholic beverages. ***[Schedule 1, items 69 and 70]***

2.41 The rules apply to goods that are entered for home consumption on or after the time that the rules take effect under the *Legislative Instruments Act 2003* ***[Schedule 1, item 60, subsection 65(3)]***. However, a savings provision ensures that current sections 77B and 77F of the Excise Act continue in effect after the commencement date of the new provision until the first set of rules are made under it ***[Schedule 1, item 106]***.

2.42 General definitions of 'bulk container' and 'container' are found in current subsection 4(1) of the Excise Act. These definitions are omitted from current section 77A of the Excise Act as they are not required and the existing general definition suffices. ***[Schedule 1, items 67 and 68]***

Revenue protection measure — tobacco leaf

2.43 This measure aims to protect the revenue in circumstances where tobacco leaf is unable to be accounted for. This is achieved by broadening the class of persons who can be asked to account for tobacco leaf and clarifying the amount of duty to be paid in circumstances where this does not occur.

2.44 Current section 105 of the Excise Act allows for an officer to check the stock of tobacco leaf of any producer or dealer, and if any deficiency is found which cannot be accounted for to the satisfaction of the Collector, the producer or dealer must pay the duty that would be payable on the amount of tobacco leaf found to be deficient as if it had been manufactured into excisable goods and entered into consumption on the day on which the deficiency is found.

2.45 Current section 105 has a limited application to producers and dealers and can not apply to other persons who may have or have had possession, custody and control of tobacco leaf. The amount of duty to be paid in the event of a deficiency is also unclear. As a consequence, it is repealed. ***[Schedule 1, item 81]***

2.46 A section of the Excise Act with a broader application replaces current section 105 and allows the Collector to request that a person who has or had possession of tobacco leaf, account for it ***[Schedule 1, item 65, subsection 77AA(1)]***. If the person does not account for the tobacco leaf to

the satisfaction of the Collector, the Collector may issue a demand in writing that the person pay an amount equivalent to the duty that would have been paid on the leaf if it was manufactured into excisable tobacco classified to subitem 5.5 in the excise tariff. This is the weight in kilograms of the tobacco leaf not accounted for, multiplied by the rate of duty applicable to goods classified to subitem 5.5 of the excise tariff, on the day the demand was issued ***[Schedule 1, item 65, subsection 77AA(2)]***. This provision is necessary as tobacco leaf, that is not yet excisable because it has not undergone a process other than curing, effectively only has one purpose and that is to be made into excisable tobacco. Section 60 of the Excise Act protects the revenue in the case of excisable goods on which duty has not been paid and this provision is similar in that it protects the revenue from loss should tobacco leaf not be able to be accounted for.

Example 2.1

Tony is a tobacco producer who, according to his accounts, should be holding stock of 200 kilograms of tobacco leaf within his licensed premises. When requested to account for this tobacco leaf, the Collector establishes that Tony only holds 150 kilograms and 50 kilograms is missing. Tony is unable to explain the absence of the 50 kilograms of tobacco leaf to the satisfaction of the Collector.

On 24 July 2006 the rate of duty applicable to goods classified to subitem 5.5 of the excise tariff is $290.74 per kilogram. The Collector issues a demand in writing on that day that Tony pay the following amount:

Deficient tobacco leaf × tobacco excise rate = 50 × 290.74 = $14, 537

2.47 A request to account for tobacco leaf or a demand under the new section 77A of the Excise Act is not a legislative instrument as it does not fall within the definition given in section 5 of the *Legislative Instruments Act 2003* ***[Schedule 1, item 65, subsection 77AA(4)]***. The liability of a person arising under another provision of the Excise Act or a security given under the Excise Act is not affected by this section ***[Schedule 1, item 65, subsection 77AA(3)]***.

2.48 Current section 162C of the Excise Act specifies decisions to which persons may object, if they are dissatisfied, in the manner set out in Part VIC of the *Taxation Administration Act 1953*. A demand made by the Collector under new section 77A of the Excise Act is added to current section 162C as a reviewable decision. ***[Schedule 1, item 89]***

Revenue protection measure — repackaging of beer

2.49 Duty on beer is paid according to size of the container in which it is packaged as well as its strength. Beer packaged in containers exceeding 48 litres pays a lower rate of duty than beer in containers less than 48 litres. Draught beer has been subject to a lower rate of excise since 4 April 2001, when the Government introduced a tariff proposal to give effect to an announcement made by the Prime Minister on 3 April 2001.

2.50 The lower rate of excise applicable to draught beer has resulted in some entities clearing beer in containers greater than 48 litres and then subsequently repackaging the beer into smaller containers. This circumvents the policy that beer in bottles and cans pays a higher rate of duty than beer in kegs.

2.51 This measure inserts a section into the Act which provides that if beer packed in an individual container exceeding 48 litres has been delivered and the beer is subsequently repackaged into individual containers not exceeding 48 litres then that activity constitutes excise manufacture. The effect of this provision is that duty must be paid on the repackaged beer at the rate applicable to beer packaged in containers less than 48 litres. ***[Schedule 1, item 72]***

2.52 This measure removes the incentive for parties to be involved in repackaging of beer to avoid excise and therefore it is expected that this activity will no longer be carried out for this purpose.

Special provisions relating to spirits

Concessional spirits

2.53 Changes to the concessional spirits regime have the aim of reducing the administrative impact of users on concessional spirits. These changes are not intended to restrict access to concessional spirits available under the current regime bit rather to simplify for users and the Australian Taxation Office (ATO) the administration of the system and to make clear the overriding policy principles under which spirits are eligible for excise-free treatment. The relevant subitems in the excise tariff rely on provisions within the Excise Act (see paragraphs 1.35 to 1.38).

Fortifying spirits

2.54 The CEO may grant written approval for a person to use spirits to fortify Australian wine or Australian grape must. The approval may provide for a one-off quantity or may provide for a quantity per month or

year and specify any conditions to which the approval is subject. A person who has been granted an approval may receive spirits classified to subitem 3.5 of the excise tariff ***[Schedule 1, item 73, subsections 77FD(1) to (3)]***. A person who has received a spirit in accordance with an approval under this item may be asked to account for the use of the spirit (see paragraph 2.61).

2.55 An approval granted by the CEO under this provision is not a legislative instrument as it does not fall within the definition given in section 5 of the *Legislative Instruments Act 2003*. ***[Schedule 1, item 73, subsection 77FD(4)]***

Spirits for industrial, manufacturing, scientific, medical, veterinary or educational purposes

2.56 The CEO may determine a class of persons for the purposes of subitem 3.6 of the excise tariff, which allows spirits to be entered for use by a person in a class so determined for an industrial, manufacturing, scientific, medical, veterinary or educational purpose. In addition to determining a class of persons, specific amounts of spirits relevant to each class can be included in the determination. For example, the determination could allow 25 litres of spirits per month to be entered for use by pharmacists. A determination by the CEO under this provision is a legislative instrument as it falls within the definition given in section 5 of the *Legislative Instruments Act 2003* ***[Schedule 1, item 73, section 77FE]***. A person who has received a spirit in accordance with an approval under this item may be asked to account for the use of the spirit (see paragraph 2.61).

2.57 The CEO may grant written approval for a person to use spirit for the purposes of subitem 3.7 of the excise tariff for industrial, manufacturing, scientific, medical, veterinary or educational purposes. The approval can be for a one-off quantity or for a specified amount per month or per year. The approval can be subject to conditions. For example, it may be a condition that the spirit must contain a percentage of other substances. A person who receives a spirit under this provision may be asked to account for the use of the spirit (see paragraph 2.61). ***[Schedule 1, item 73, subsections 77FF(1) to (3)]***

2.58 An approval granted to a person by the CEO for the identified uses is not a legislative instrument as it does not fall within the definition given in section 5 of the *Legislative Instruments Act 2003* ***[Schedule 1, item 73, subsection 77FF(4)]***. The CEO must develop guidelines to be taken into account when deciding whether or not to grant an approval under this provision. These guidelines are a legislative instrument because they fall within the meaning of section 5 of the *Legislative Instruments Act 2003* ***[Schedule 1, item 73, subsection 77FF(5)]***.

2.59 The use of spirits for industrial, manufacturing, scientific, medical, veterinary or educational purposes are non-beverage uses. In developing these guidelines, the CEO will look at the likelihood of the spirit being used as a beverage or as an input to the making of a beverage. The CEO will also look at the likelihood of the spirit being consumed other than as a beverage by people where an intoxicating effect would be provided. For example, a spirit used in making puddings does not provide an intoxicating effect, where the pudding is eaten but a spirit used to make alcoholic jellies or ices does and accordingly, approval would not be given for making alcoholic jellies or ices.

2.60 Some uses will result in a product that can provide an intoxicating effect, however the targeted use of that product is not for an intoxicating effect. For example, spirits may be used in the production of flavours. The targeted users of these flavours are manufacturers of other products (such as cakes, chocolates and ice creams) but it is possible that the flavours may be misused as a base for beverages. In instances such as this the guidelines may include conditions that must be complied with. Conditions could include stipulating the size of the bottles that products must be packaged in. This will not necessarily impose additional requirements on users but rather create a clear legislative and administrative framework for requirements that are already in place.

2.61 Where a person has an approval for spirits under subitem 3.5 or 3.7 of the excise tariff, the Collector may ask the person to account for any spirit delivered for home consumption to ensure that the spirit has been used for the purpose for which the approval has been granted. ***[Schedule 1, item 73, subsection 77FH(1)]***

2.62 Where a spirit classified to subitem 3.6 of the excise tariff is delivered for home consumption and delivered to a person who is included in a class of persons as determined under section 77FE (see paragraph 2.56), the Collector may request in writing that the person account, to the satisfaction of the Collector, that the spirit has been used for an industrial, manufacturing, scientific, medical, veterinary or educational purpose. ***[Schedule 1, item 73, subsection 77FH(2)]***

2.63 Should a person be unable to account, to the satisfaction of the Collector, for the use of the spirit a demand may be made for an amount equal to the duty that would have otherwise been paid on the spirit. The amount is calculated by reference to the item and duty rate, in the excise tariff, that would apply to the spirit on the day the demand is made as if the spirit were not subject to an approval or determination. ***[Schedule 1, item 73, subsection 77FH(3)]***

2.64 It is within the Collector's discretion to not issue a demand notwithstanding that the spirit has not been used in accordance with the

approval. If the Collector is satisfied that the spirit has not gone to a use that would otherwise attract excise then the Collector may choose to not issue a demand.

2.65 A request to account for spirits or a demand under the new section 77FH of the Excise Act is not a legislative instrument as it does not fall within the definition given in section 5 of the *Legislative Instruments Act 2003* ***[Schedule 1, item 73, subsection 77FH(5)]***. The liability of a person arising under another provision of the Excise Act or a security given under the Excise Act is not affected by the section ***[Schedule 1, item 73, subsection 77FH(4)].***

2.66 Currently, section 162C of the Excise Act specifies decisions to which persons may object, if they are dissatisfied with them, in the manner set out in Part VIC of the *Taxation Administration Act 1953*. A demand if spirits are not satisfactorily accounted for under section 77FH is to be added to current section 162C as a reviewable decision ***[Schedule 1, item 89]***. Decisions of the CEO to refuse to give an approval or specify conditions in an approval given under new section 77D or 77F of the Excise Act are also to be added to current section 162C as reviewable decisions ***[Schedule 1, item 90]***.

Example 2.2

VG Meadmakers Pty Ltd has an approval to use a spirit classified to subitem 3.5 of the excise tariff to fortify mead. The approval is for 1,000 litres of alcohol per year. AB Spirit Makers Pty Ltd supplies VG Meadmakers Pty Ltd with 1,000 litres of alcohol. When asked to account for the 1,000 litres of alcohol VG Meadmakers Pty Ltd is able to show that 900 litres of alcohol has gone into the production of mead and that 100 litres in still in their possession. In this case they have accounted for the spirit.

Example 2.3

Mouthwashes Australia Ltd has an approval to use a spirit classified to subitem 3.7 of the excise tariff to manufacture mouthwashes. They have approval for 1,000 litres of alcohol per year. AB Spirit Makers Pty Ltd supplies Mouthwashes Australia Ltd with 1,000 litres of alcohol — in the absence of an approval the spirit would be classified to subitem 3.10. When asked to account for the 1,000 litres of alcohol Mouthwashes Australia Ltd is able to show that 500 litres of alcohol has gone into the production of mouthwashes, 400 litres are still in their possession but they cannot account for 100 litres. In this case they have not accounted for the spirit. The Collector can demand they pay an amount equal to 100 × the rate applicable, on the day of the demand, to subitem 3.10.

Denatured spirits

2.67 The CEO may determine, by legislative instrument, formulas for denaturing of spirits. Where a spirit conforms with an approved formula it will be classified to subitem 3.8 of the excise tariff and attract a free rate of duty. Denaturing is rendering the spirit unfit for human consumption by the addition of substances that make the spirit unsuitable for consumption. In determining whether a formula should be approved, the CEO is primarily concerned with the resulting risk to the revenue. For example, if the CEO considers the substances can be easily removed thereby making the spirit suitable for consumption, he or she may decide to not approve that formula. In assessing formulas the CEO will use risk management principles. The result may be that certain users of a spirit who currently require an approval to use a spirit and therefore are obliged to keep records may have a lower compliance burden. ***[Schedule 1, item 73, section 77FG]***

2.68 Removing a denaturing substance is an offence (see paragraph 1.38).

Delivery from the CEO's control of brandy, whisky or rum

2.69 The Spirits Act is repealed (see paragraph 2.118). The Spirits Act provides that brandy, whisky or rum must not be delivered from the CEO's control unless it has been matured by storage in wood for a period of not less than two years. Following industry consultation, this measure implements the same controls that were in place in the Spirits Act.

2.70 'Brandy', 'rum' and 'whisky' are defined in the Excise Act. The definitions for rum and whisky replicate the definitions which are commencing notes to the current *Excise Tariff Act 1921* (Excise Tariff Act) which are repealed by this Bill. This is to provide certainty to industry. Brandy is defined by reference to the commencing note to the Excise Tariff Act (see paragraph 1.12) and this definition transfers a key element of a pre-existing definition of brandy from the Spirits Act; that is, that brandy is made with grape input. This definition is important to the different tax rate applying to brandy, and also informs the maturation requirements. ***[Schedule 1, item 73, section 77FI]***

Removal of denaturing substances

2.71 The Spirits Act is repealed (see paragraph 2.118). The current law provides an offence in the Spirits Act for abstracting methylating substance from methylated spirits. Spirits can be denatured to a formula approved by the CEO (see paragraph 2.67). This allows spirits to be used for non-beverage uses without attracting the excise duty that is payable on

other spirits and limits the risk that the spirit will be diverted into the beverage market. This measure recreates an offence that was contained in the Spirits Act where a person removes, without permission, denaturing substances, (ie, the substances that make it unsuitable as a beverage) after the denatured spirit has been delivered into home consumption. ***[Schedule 1, item 73, section 77FJ]***

Stills

2.72 A still is an apparatus for distilling mixtures, including those containing alcohol. The term is not defined in the law and takes its ordinary meaning. Spirits are made by distilling liquids containing alcohol. The distillation process will result in an excisable product and that is why controls are required over stills.

2.73 The Distillation Act is repealed (see paragraph 2.119). The current law in the Distillation Act provides offences in relation to stills, which are to be transferred to the Excise Act.

2.74 Unless a person is licensed to manufacture excisable goods or has been given written permission by the CEO to do so, they will commit an offence if they make a still, remove, set up or erect a still, sell or otherwise dispose of a still, buy or otherwise acquire a still, import a still, or have a still in his or her possession. The still must be of a capacity exceeding 5 litres for an offence to be committed. ***[Schedule 1, item 73, section 77FK]***

2.75 Small stills (less than 5 litres) can be used in laboratories, classrooms and other places to distil things other than excisable goods and so the offence provisions above only apply to stills with a capacity not exceeding 5 litres. This capacity refers to the amount of liquid that can be placed in the apparatus for distilling. The use of a small still to manufacture excisable goods without a licence will still be an offence under other provisions of the Excise Act.

2.76 Stills that are dealt with in a manner inconsistent with the new offence provision are directly included within section 116 of the Excise Act as forfeited goods ***[Schedule 1, item 85]***. This has the same effect as section 107AA which is repealed by this Bill (see paragraph 2.144).

2.77 A still is also a special forfeited good, which further affects the manner in which the still can be dealt with under the seizure provisions in current section 107FF of the Excise Act, and in certain circumstances prevents return of the still and enables condemnation of it. This achieves the same outcome as the Spirits Act, which is repealed. ***[Schedule 1, item 84]***

Description of spirits as old or very old

2.78 The Spirits Act is repealed (see paragraph 2.118). Current law in the Spirits Act provides an offence if, in relation to trade and commerce with other countries and among the States, a person describes spirits as 'old' or in such a way that could lead to a reasonable belief that the spirit has been aged in wood for more than five years *unless* the spirits have been aged in wood for at least five years or describes spirits as 'very old' or in such a way that could lead to a reasonable belief that the spirit has been aged in wood for more than 10 years *unless* the spirits have been aged in wood for at least 10 years.

2.79 This measure incorporates into the Excise Act an offence if a person:

- describes any spirit as 'old' or in such a way which could reasonably lead to the belief that the spirit had been matured for at least five years; or

- describes any spirit as 'very old', or in a way which could reasonably lead to the belief that the spirit had been matured for at least 10 years,

unless the spirit has been aged in wood for five years for spirits described as old' or 10 years for spirits described as 'very old'. The offences apply to misdescription of any spirit, irrespective of whether it is imported or manufactured in Australia.

2.80 The second element of the offence is that the person does so in relation to trade or commerce between Australia and another country, between two States, between a State and a Territory or between two Territories. This second element is an element of absolute liability. While this is an element of absolute liability, a prosecution would still need to prove fault elements in the first element, that is the description of the spirit. The offence that this provision is replicating from the Spirits Act was created prior to the implementation of the Criminal Code. Absolute liability is appropriate for this element as the penalty of 10 penalty units is relatively low, the fault elements of whether the description was done in relation to commerce or trade would be difficult to prove but it is appropriate to punish offenders so that descriptions of spirits are accurate and not misleading for consumers.

2.81 Storage in wood is a process that provides characteristics to spirits. Typically the longer the time the spirit matures in wood, the more the quality of the spirit improves. False descriptions in relation to spirits could lead a person to believe they are buying a product of superior quality. While the length of time in wood does not affect the amount of

excise duty payable on the spirit, following industry consultation, this measure implements the same controls that were in place in the Spirits Act. ***[Schedule 1, item 73, section 77FL]***

Remissions, rebates and refunds

Remissions subject to the CEO's approval

2.82 Currently subsection 78(1) of the Excise Act allows remissions, rebates and refunds of excise duty in respect of excisable goods generally, or in respect of the goods included in a class of excisable goods in such circumstances, and subject to such conditions and restrictions (if any) as are prescribed.

2.83 An additional provision is inserted to allow regulations made for the purposes of subsection 78(1) of the Excise Act to make provisions for and in relation to the CEO granting approvals. The purpose of this provision is to enable certain remission and rebate circumstances which require approval of the CEO to be created within the excise regulations. The remission or refund circumstances in question will provide concessional excise treatment previously delivered through free items within the excise tariff (see paragraph 1.118) ***[Schedule 1, item 78]***. For example, rather than being a subitem in the excise tariff, tobacco for use in a medical or scientific research programme, subject to the CEO's approval, will be captured by a new remission circumstance and this is permitted by the new provision.

2.84 Additionally the excise regulations will provide that no application for remission is required in those circumstances previously covered by items in the excise tariff.

Remission for chemically transformed fuel

2.85 All rates of excise duty on fuel (other than fuel for use in aircraft) are $0.38143. This is because in virtually all circumstances, relief from the incidence of excise is delivered through the provisions of the fuel tax credit system. This includes instances where fuel is used other than as fuel. Some examples would be where fuel is blended with other substances to form solvents or cleaning agents. In these circumstances, the fundamental character of the fuel is unchanged as it continues to exist within the product that is created by using the fuel as input.

2.86 However, in certain limited cases of large scale industrial manufacture, the fuel is transformed through a chemical reaction to produce an entirely different substance that is no longer an excisable

product. The fuel that is used in the process ceases to exist, either as a separate entity or within some other product or mixture, because it is chemically transformed. An example is the use of benzene, classified to subitem 10.25 of the excise tariff, in large scale petrochemical manufacture to form styrene, which is not classified to the excise tariff. In these circumstances, provided the manufacturer of the styrene holds an excise licence they will be able to access benzene on which duty has not been paid and the duty will be extinguished upon the chemical transformation. The excise licence could be a manufacturer licence, because they manufacture excisable products in some other process, or it could be an excise storage licence.

2.87 A new provision in the Excise Act provides that excise duty is taken to be remitted where fuel is used in the manufacture of goods that are not excisable where the fuel has been chemically transformed (other than by combustion) in that manufacture. ***[Schedule 1, item 79]***

Collection and recovery

2.88 This measure repeals debt recovery provisions specific to current section 60 of the Excise Act and inserts notes in the relevant places directing the reader to provisions in the *Taxation Administration Act 1953* dealing with recovery of tax-related liabilities. ***[Schedule 1, items 57 and 58]***

2.89 For clarity, a note is inserted after current subsection 54(1) of the Excise Act referring the reader to the Part 4-15 of the *Taxation Administration Act 1953* for collection and recovery provisions applying to excise duty. ***[Schedule 1, item 50]***

2.90 In addition, the table listing tax-related liabilities for the purposes of collection and recovery provisions of the *Taxation Administration Act 1953* includes accounting for excisable goods under section 60 of the Excise Act and accounting for the use of spirits (see paragraph 2.61) and tobacco leaf stock deficiency (see paragraph 2.46). ***[Schedule 1, item 99]***

Record keeping for dealers or producers

2.91 This measure repeals provisions that require licensed producers and dealers to keep prescribed accounts and make prescribed returns. ***[Schedule 1, items 24 and 25]***

2.92 This measure amends existing record keeping and retention requirements so that all licence holders can be directed to keep, retain and produce records as directed by the CEO. This measure replaces the

prescribed accounts and returns for licensed dealers or producers. This change is not intended to impose greater requirements on any licensed dealers and producers than are currently prescribed, and the CEO is allowed to tailor requirements for any licence holder. These requirements can be tailored in a manner consistent with the ATO Compliance Model (available on the ATO website at www.ato.gov.au). This indicates that activities directed at taxpayers are proportional to the taxpayer behaviour in complying with the law. This applies to producer or dealer licences issued before or after this measure commences. ***[Schedule 1, items 49 and 103]***

Goods sold to a relevant traveller

2.93 Inwards duty-free stores operate under the provisions of customs and excise legislation, which work in an interactive way. Such stores are able to sell goods to purchasers who are travellers who provide proof that they have arrived in Australia on an international flight subject to certain conditions. Under a relevant customs by-law, travellers may only bring 2.25 litres of alcohol and a maximum of 250 cigarettes (with one opened packet containing 25 cigarettes or less also allowed) into Australia duty-free. If a traveller exceeds the concession limits for either of these groups of items (ie, alcohol or tobacco), Customs will charge the traveller duty on the entire importation or purchase within that group of products.

2.94 An amendment to the excise tariff removes current item 21 that provides excisable goods purchased at an inwards duty-free shop by a relevant traveller, free of duty. An equivalent circumstance will be provided for in the regulations. That circumstance works together with item 15 in Schedule 4 to the *Customs Tariff Act 1995* to provide incoming travellers from overseas with a 'duty-free allowance'. This means they do not need to pay duty, either customs or excise, on alcoholic beverages or tobacco products up to the limits specified in the bylaw for item 15. The 'duty-free allowance' is the total of goods imported by the traveller, including those purchased at an inwards duty-free store.

2.95 For clarity this measure inserts provisions to make it clear that if the relevant traveller has goods in excess of the total duty-free allowance then they are required to pay excise duty at the rate applicable on that day, on any of those goods that are excisable goods ***[Schedule 1, items 51, 54, and 55]***. A savings provision has been included so that this measure applies to sales by inwards duty-free stores made after the commencement of the item, regardless of when the store was given permission to deliver goods to relevant travellers ***[Schedule 1, item 104]***.

Example 2.4

Paul arrives from overseas in possession of 1 litre of whisky and then purchases 1 litre of Australian rum at an inwards duty-free shop. He will not have to pay customs duty on the whisky or excise duty on the rum as the total alcoholic beverages he has is less than the amount specified in the bylaw for item 15 of Schedule 4 to the *Customs Tariff Act 1995* for alcoholic beverages (currently 2.25 litres).

Anita arrives from overseas in possession of 2 litres of gin and purchases 1 litre of Australian brandy at an inwards duty-free shop. She will be required to pay the excise duty on the litre of Australian brandy and customs duty on the 2 litres of imported gin — note the customs duty is not imposed or collected under the Excise Act.

End of payments to naphtha producers

2.96 Current section 78AAAA of the Excise Act allows applications to be made for payments in respect of naphtha from shale mined in Australia based on the amount of excise duty payable on the volume of unleaded gasoline that could be obtained from the naphtha. However, entitlement to a payment does not apply in respect of naphtha produced after 31 December 2005.

2.97 Given that no further entitlements to payments to naphtha producers will arise after 31 December 2005, section 78AAAA of the Excise Act is repealed. ***[Schedule 1, item 80]***

2.98 Due to the operation of section 8 of the *Acts Interpretation Act 1901*, the repeal of this section 78AAAA of the Excise Act does not affect any right of a naphtha producer to a payment which was acquired prior to its repeal.

Biofuels

Definition of renewable diesel

2.99 A new cleaner fuel is added to the cleaner fuels grants scheme. Renewable diesel is added to the definition of 'cleaner fuel' in the *Energy Grants (Cleaner Fuels) Scheme Act 2004*. ***Renewable diesel*** is defined as liquid fuel manufactured from vegetable oils or animal fats (including oils from these sources) through a process of hydrogenation. This fuel must meet the fuel standard, under the *Fuel Quality Standards Act 2000*, for diesel.

2.100 The process of hydrogenation may occur as part of another process and may produce a fuel in which the renewable diesel is not

isolable from conventional diesel. In these instances the portion of fuel that is attributable to the animal fat or vegetable oil is renewable diesel. The amount of renewable diesel that is attributable to the animal fat or vegetable oil is calculated in accordance with regulations. This will allow certainty in determining the grant payable in this instance. ***[Schedule 1, items 7, 8, 10 and 12]***

2.101 The offset rate, which establishes the amount of grant payable, until 30 June 2011 is set at 100 per cent of the excise duty payable on biodiesel. This ensures that the renewable diesel receives the same treatment as biodiesel. After 30 June 2011 the rates phase down in equal steps until 30 June 2015. Renewable diesel receives this same treatment. ***[Schedule 1, items 13 to 15]***

2.102 The commencing date for renewable diesel is 1 July 2006 ***[Schedule 1, item 11]***. An application provision makes this definition only applicable to renewable diesel imported or manufactured after the commencement of the application item ***[Schedule 1, item 101]***.

2.103 Renewable diesel is also inserted into the object section of the *Energy Grants (Cleaner Fuels) Scheme Act 2004*. ***[Schedule 1, items 4 and 5]***

Amendments to promote best practice regulation

Repeals

2.104 The Excise Act was developed at a time where there was a significantly higher degree of physical control of goods by excise officers. Some provisions within the existing Excise Act have not been reviewed since the advent of a more self-assessment based approach to revenue administration. This means that there are opportunities to address inconsistencies with the Government's stance on regulation reform (including the preference to remove regulation which is unnecessarily burdensome, complex, redundant or duplicates regulations in other jurisdictions).

2.105 Certain provisions within the current Excise Act which prescribe the way that businesses must conduct excise operations and are overly prescriptive and no longer consistent with best practice regulation, are repealed. Certain provisions relate to labelling and marking which are now adequately covered by other legislation. In other cases, the provisions fundamentally conflict with modern administration.

2.106 Current section 47 of the Excise Act provides that every licensed manufacturer must, if required by the Collector, provide reasonable office accommodation and board and lodging for the supervising officer of his or her factory to the satisfaction of the Collector. Current section 48

provides an entitlement to fair remuneration at agreed or prescribed rates for the provision of board and lodging pursuant to a request of the Collector. Sections 47 and 48 are repealed on the basis that they are no longer utilised and are inconsistent with modern administration of the excise system. ***[Schedule 1, items 47 and 48]***

2.107 In addition, the following current sections of the Excise Act which are no longer administered and inconsistent with best practice regulation are repealed by this Bill:

- section 57 — requires that excisable goods of a prescribed kind only be removed from a factory in packages of such sizes and marked in such manner as may be prescribed ***[Schedule 1, item 52]***;
- section 67 — requires the Collector to furnish to each licensed manufacturer a factory number and a state number representing the State in which the factory is situated ***[Schedule 1, item 61]***;
- section 69 — requires all tobacco and snuff manufactured in a factory to be put in packages of the prescribed weights and sizes ***[Schedule 1, item 62]***;
- section 70 — requires that packages of manufactured tobacco, snuff, cigars or cigarettes must be marked in the prescribed manner prior to removal from the factory and the marking must be in distinct characters and effected by a method approved by the Collector ***[Schedule 1, item 63]***; and
- section 77C — requires that beer not be removed from a brewery unless each container and each package containing the containers is marked or labelled in the prescribed manner, except with permission ***[Schedule 1, item 70]***.

2.108 Current subsections 120(1A) and (1B) of the Excise Act specify that absolute liability applies to certain elements of offences which no longer appear in the Excise Act. These two subsections are repealed as they are no longer required. ***[Schedule 1, item 86]***

2.109 Current section 163 of the Excise Act specifies that a prescribed declaration may be made before any Justice of the Peace in any State, a Commissioner for Declarations, or before any officer, postmaster or electoral officer. As the prescribed declarations are to be repealed from the excise regulations, and the signing of documents is sufficiently covered by other legislation, this section is repealed by this Bill. ***[Schedule 1, item 91]***

Amendments

2.110 Current section 75 of the Excise Act provides that excisable goods consisting of stalks, refuse, clippings or waste arising from the manufacture of tobacco in a factory may, by authority, be removed from the factory for destruction as prescribed. The words 'as prescribed' are to be omitted from this section. Removal of relevant goods for destruction still requires authority and this provides sufficient ability to protect the revenue, in accordance with risk assessment approaches, without specific methods of destruction being prescribed. ***[Schedule 1, item 64]***

2.111 The definition of 'spirit' within the Excise Act is amended to take account of the changed numbering of the excise tariff. The definition now includes all goods that would be classified to item 3 of the excise tariff. ***[Schedule 1, item 22]***

2.112 A definition of 'other excisable beverage' appears in current subsection 4(1) of the Excise Act. As this term is only used within current section 58 of the Excise Act, it is to be added into that section and repealed from subsection 4(1). However, because the definition of 'spirits' includes other excisable beverages of an alcoholic strength by volume exceeding 10 per cent, the definition within section 58 is limited to those not covered by the definition of 'spirits', that is those with an alcoholic strength by volume not exceeding 10 per cent. ***[Schedule 1, items 21 and 53]***

2.113 Current section 59B of the Excise Act regarding revocation and variation of quota orders contains a reference to regulations made by virtue of section 59D. As section 59D of the Excise Act was repealed in 1981, this reference is removed from section 59B. ***[Schedule 1, item 56]***

2.114 Current paragraph 39K(6)(d) of the Excise Act requires a notice to be given in a manner prescribed by the regulations. This requirement is removed so that the notice is given in the same manner as other notices in Part IV of the Excise Act (Part IV relates to excise licences). ***[Schedule 1, item 46]***

Repeal of Acts

Repeal of the fuel penalty surcharge scheme

2.115 From 1 July 2006, through reforms to be implemented through the Fuel Tax Bill 2006, fuel tax credits will replace existing rebates and subsidies on fuels, including concessional rates of excise duty given to certain fuels for use other than as a fuel or other than in an internal combustion engine.

2.116 The current *Fuel (Penalty Surcharges) Administration Act 1997*, the *Fuel Blending (Penalty Surcharge) Act 1997*, the *Fuel Misuse (Penalty Surcharge) Act 1997* and the *Fuel Sale (Penalty Surcharge) Act 1997* provide a revenue protection scheme to ensure that fuel that has been granted a concessional rate of duty is not subsequently used in an internal combustion engine without the prepayment of tax on consumption (the penalty surcharge). This scheme is no longer required as concessional rates of duty in this context are not directly included in the excise tariff, and therefore the four Acts listed are repealed. ***[Schedule 2, item 1]***

Repeal of the Coal Excise Act

2.117 Coal is listed in the excise tariff, and has attracted a free rate of duty since 1992. The inclusion of coal in the excise tariff means that it is an excisable product, and coal producers are therefore required to be licensed as excise manufacturers. Coal is omitted from the excise tariff rather than be included at a free rate of excise duty as in the existing law (see paragraph 1.119). The Coal Excise Act, which contains licensing and other requirements, is repealed as it is no longer considered necessary to impose these requirements on activities involving coal. This is consistent with the Government's stance on regulation reform and promotes best practice regulation. ***[Schedule 2, item 1]***

Repeals of the Spirits Act and the Distillation Act

2.118 The Spirits Act, which provides for controls over the manufacture of spirits, including brandy, whisky, rum and methylated spirits, is repealed on the basis that most provisions it contains are adequately covered in the Excise Act or are no longer relevant to the effective management of the alcohol taxation regime. ***[Schedule 2, item 1]***

2.119 The Distillation Act, which provides controls on the distillation of spirits including stills, distilleries, licences and fortification of Australian wine is also repealed. The process of distilling spirits also results in the manufacture of excisable goods and as such many of the provisions are adequately covered in the Excise Act. ***[Schedule 2, item 1]***

2.120 Certain provisions from these Acts, including those which are necessary for revenue protection or compliance purposes and product standards will be transferred to the Excise Act (see paragraphs 2.69 to 2.81). Provisions that are highly prescriptive and interventionist in terms of how a person conducts their business are no longer relevant to the effective management of the alcohol taxation regime. These provisions are not incorporated into the Excise Act.

Application and transitional provisions

Commencement

2.121 Schedules 1 and 2 to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006 commence on 1 July 2006.

Transitional provisions

Revenue protection measure — tobacco leaf

2.122 Under the Excise Act, the Collector will be enabled to request that any person who has or had possession, custody or control of tobacco leaf to account for it (see paragraphs 2.46). An application provision has been included to provide clarity that this applies in relation to tobacco leaf possessed before or after commencement of the relevant provision. ***[Schedule 1, item 105]***

2.123 This provision expands the previous provision where only producers and dealers were covered. Any person other than a producer or dealer would not legitimately have possession of tobacco for any significant length of time. Generally such possession would be limited to transportation activities. As a consequence, in order to avoid complexities in the law around whether tobacco leaf was possessed before or after commencement, the new provision applies regardless of when the tobacco leaf came into the relevant person's possession.

Changes to excise licensing

2.124 Additional factors can be taken into account by the Collector in determining whether to grant or whether to suspend a licence (see paragraphs 2.29 to 2.34).

2.125 These additional factors for granting a licence can be taken into account where an application is made after the new provisions commence. If a person applied for a licence before 1 July 2006 (the commencement date of the new provisions) but the Collector has not yet made a decision to grant or refuse to grant the licence, then the Collector can not take these new factors into account. ***[Schedule 1, item 102, subsection (1)]***

2.126 The additional factors for suspending a licence can be taken into account where a licence has been granted before or after 1 July 2006 (the commencement date of the new provisions). Therefore, considerations to suspend a licence after this date are governed by the new provisions. ***[Schedule 1, item 102, subsection (4)]***

2.127 A licence granted after commencement, irrespective of when the relevant application was made, has duration in accordance with the new provision governing the validity periods of licences (see paragraph 2.35). ***[Schedule 1, item 102, subsection (2)]***

2.128 Renewals of licences occurring after commencement, irrespective of when the licence was granted, will be subject to the new provisions governing the renewal of licences (see paragraph 2.36). ***[Schedule 1, item 102, subsection (3)]***

2.129 To bring existing licences into line with a common expiry date (see paragraph 2.35), all licences in existence on commencement expire on 31 March 2007. Storage licences, producer licences and dealer licences, which do not currently expire, will now expire on 31 March 2007. Manufacturer licences, which currently expire on 31 December, will now expire on 31 March 2007. All licences may be renewed for three years. ***[Schedule 1, item 102, subsection (5)]***

Revenue protection measure — repackaging of beer

2.130 The provisions relating to repackaging beer after duty has been paid (see paragraphs 2.49 to 2.52) apply to beer that is repackaged after commencement regardless of when the duty was paid. It is made clear that these provisions apply to beer on which duty has been paid under items in the current excise tariff following the commencement of the new excise tariff. ***[Schedule 1, item 107]***

Stabilised crude petroleum oil and petroleum condensate

2.131 Section 77K of the Excise Act provides that duty can be applicable to stabilised crude petroleum oil or petroleum condensate under two items (item 10 and item 20 or 21) in the excise tariff. This measure preserves the effect of this by including reference to the tariff item applicable to stabilised crude petroleum oil and petroleum condensate prior the new excise tariff commencing. ***[Schedule 1, item 108]***

Consequential amendments

The excise tariff

2.132 The excise tariff incorporates a revised numbering system. This means that a number of references to current excise tariff classifications in legislation will need to be updated to reflect the equivalent classifications within the new excise tariff. This type of amendment is made to the following provisions:

- the definitions of 'aviation gasoline' and 'aviation kerosene' in section 3 of the *Aviation Fuel Revenues (Special Appropriation) Act 1988* ***[Schedule 1, items 2 and 3]***;

- the definition of 'fuel' within the Excise Act ***[Schedule 1, item 19]***;

- the definition of 'alcoholic beverage' within the Excise Act ***[Schedule 1, item 66]***;

- section 77K of the Excise Act ***[Schedule 1, items 76 and 77]***;

- the definition of 'excisable crude petroleum oil' in subsection 4(1) of the *Petroleum Excise (Prices) Act 1987* ***[Schedule 1, item 95]***; and

- the definition of 'taxable fuel' in the Fuel Tax Bill 2006 ***[Schedule 1, items 92, 93 and 94]***.

Cleaner fuels scheme

2.133 The definition of 'manufacture' in section 4 of the *Energy Grants (Cleaner Fuels) Scheme Act 2004* currently refers to section 77H of the Excise Act which deals with petroleum blending. Blending of fuel items is now dealt with in section 77G of the Excise Act so the definition of manufacture is amended to reflect this. ***[Schedule 1, item 9]***

Repeal of Acts

Repeal of fuel penalty surcharge scheme

2.134 The operation of the fuel penalty surcharge scheme under the *Fuel (Penalty Surcharges) Administration Act 1997*, the *Fuel Blending (Penalty Surcharge) Act 1997*, the *Fuel Misuse (Penalty Surcharge) Act 1997* and the *Fuel Sale (Penalty Surcharge) Act 1997* is dependent on the use of a chemical marker to identify petroleum products entered for use as a fuel other than in an internal combustion engine, or entered duty-free for use other than as fuel.

2.135 These four Acts are repealed and therefore certain provisions within the Excise Act which relate to the chemical marker will no longer serve a purpose and are also repealed. Specifically, these provisions are:

- the definition of 'marker' which refers to the chemical additive prescribed for the purposes of section 5C of the Excise Tariff Act to be a fuel marker ***[Schedule 1, item 20]***;

- the definition of 'clean fuel' which refers to fuel that does not contain the marker or contains the marker below the prescribed proportion ***[Schedule 1, item 16]***; and

- the definition of 'designated fuel' which refers to fuel that contains at least the prescribed proportion of the marker ***[Schedule 1, item 17]***.

2.136 There are certain offences in the current law which apply where a person enters designated fuel for home consumption as clean fuel, or enters clean fuel for home consumption as designated fuel. These also no longer serve a purpose and are repealed. ***[Schedule 1, item 87]***

2.137 There is also a reference to the *Fuel (Penalty Surcharges) Administration Act 1997* and any regulations made under that Act in current section 159 of the Excise Act (which restricts the confidentiality of certain information and documents). This reference is no longer required and therefore the definition of 'excise law' within section 159 is altered accordingly ***[Schedule 1, item 88]***. However, a savings provision has been included to ensure that current section 159 will continue to apply with respect to relevant information and documents obtained before this alteration ***[Schedule 1, item 109]***.

2.138 A penalty surcharge imposed under section 23 of the *Fuel (Penalty Surcharges) Administration Act 1997* is currently included as a tax-related liability in subsection 250-10(2) of the *Taxation Administration Act 1953*. This means that the methods by which the CEO may collect and recover penalty surcharges are governed by the *Taxation Administration Act 1953*. As the *Fuel (Penalty Surcharges) Administration Act 1997* is repealed, penalty surcharge is removed from the list of tax-related liabilities. ***[Schedule 1, item 100]***

2.139 In addition, a reference to the *Fuel (Penalty Surcharges) Administration Act 1997* is omitted from the definition provisions concerning 'taxation law' in the *Taxation Administration Act 1953*. ***[Schedule 1, item 97]***

Repeal of the Coal Excise Act

2.140 Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977* specifies classes of decisions to which the Act does not apply. A reference to the Coal Excise Act within this Schedule is omitted as it is redundant due to the repeal of the Coal Excise Act. ***[Schedule 1, item 1]***

2.141 Coal excise duty is currently included as a tax-related liability in subsection 250-10(2) of the *Taxation Administration Act 1953*. This means that the methods by which the CEO may collect and recover coal

excise duty are governed by the *Taxation Administration Act 1953*. As the Coal Excise Act is repealed, coal excise duty is removed from the list of tax-related liabilities. ***[Schedule 1, item 98]***

Repeal of the Spirits Act

2.142 The current Schedule in the *Sea Installations Act 1987* refers to the Spirits Act. This reference is omitted as the Spirits Act is repealed (see paragraph 2.118). ***[Schedule 1, item 96]***

Repeal of the Distillation Act

2.143 A stock deficiency under section 50 of the Distillation Act is currently included as a tax-related liability in subsection 250-10(2) of the *Taxation Administration Act 1953*. This means that the methods by which the CEO may collect and recover such a stock deficiency is governed by the *Taxation Administration Act 1953*. As the Distillation Act is repealed, this is removed from the list of tax-related liabilities. ***[Schedule 1, item 98]***

Other consequential amendments

2.144 The definitions of 'forfeited goods' and 'offence' for the purpose of Division 1A of Part IX of the Excise Act (which relates to search and seizure) currently refer to sections of the Coal Excise Act, the Distillation Act and the Spirits Act. These definitions are repealed as these Acts are repealed. While the definitions also refer to other provisions within the Excise Act, these references are not necessary for the operation of the Division. ***[Schedule 1, items 82 and 83]***

2.145 The definition of 'Excise Acts' in section 4 of the Excise Act is also amended to remove the reference to the Distillation Act. ***[Schedule 1, item 18]***

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