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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EXCISE TARIFF AMENDMENT (ETHANOL AND BIODIESEL) BILL 2015
ENERGY GRANTS AND OTHER LEGISLATION AMENDMENT (ETHANOL
AND BIODIESEL) BILL 2015

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Treasurer, the Hon J. B. Hockey MP)

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Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
EGCFS 2004	<i>Energy Grants (Cleaner Fuels) Scheme Act 2004</i>
EGCS 2003	<i>Energy Grants (Credits) Scheme Act 2003</i>
Energy Grants Amendment Bill 2015	Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Bill 2015
ETA 1921	<i>Excise Tariff Act 1921</i>
Excise Tariff Amendment Bill 2015	Excise Tariff Amendment (Ethanol and Biodiesel) Bill 2015

General outline and financial impact

Taxation changes to fuel ethanol and biodiesel

The Excise Tariff Amendment (Ethanol and Biodiesel) Bill 2015 amends the *Excise Tariff Act 1921* to reduce the rates of excise for domestically manufactured biodiesel and fuel ethanol to nil for a one-year period commencing on 1 July 2015. The excise rates for these fuels then increase each financial year from 1 July 2016 until 1 July 2020 when the excise rate for:

- fuel ethanol will be approximately 33 per cent of the excise rate for petrol; and
- biodiesel will be equivalent to 50 per cent of the excise rate for diesel.

The Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Bill 2015 repeals the *Energy Grants (Cleaner Fuels) Scheme Act 2004* to remove grants for renewable diesel and biodiesel from 1 July 2015.

Date of effect: The amendments to remove grants for renewable diesel and biodiesel and reduce the excise rates for domestically manufactured fuel ethanol and biodiesel to zero apply from 1 July 2015. Excise duty is then phased in each year commencing 1 July 2016 until the final excise rate is reached on 1 July 2020.

Proposal announced: These measures were announced by the Treasurer in the 2014-15 Budget on 13 May 2014.

Financial impact: These measures will result in a net gain to the Budget of \$257 million over the forward estimates period, comprising:

<i>2014-15</i>	<i>2015-16</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>
–	\$52m	\$61m	\$67m	\$77m

Human rights implications: These Bills do not raise any human rights issues. See *Statement of Compatibility with Human Rights*, paragraphs 1.50 to 1.57.

Compliance cost impact: The phasing in of net rates of excise duty from 1 July 2015 imposes transitional compliance costs for affected excise duty payers and affected fuel tax credit claimants. The removal of grant entitlements for fuel ethanol, biodiesel and renewable diesel reduces compliance costs for grant claimants.

Chapter 1

Taxation changes to fuel ethanol and biodiesel

Outline of chapter

1.1 The Excise Tariff Amendment (Ethanol and Biodiesel) Bill 2015 (Excise Tariff Amendment Bill 2015) amends the *Excise Tariff Act 1921* (ETA 1921) to reduce the rates of excise for domestically manufactured biodiesel and fuel ethanol to nil for a one-year period commencing on 1 July 2015. The excise rates for these fuels then increase each year from 1 July 2016 until 1 July 2020 when the excise rate for:

- fuel ethanol will be approximately 33 per cent of the excise rate for petrol; and
- biodiesel will be equivalent to 50 per cent of the excise rate for diesel.

1.2 The Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Bill 2015 (Energy Grants Amendment Bill 2015) repeals the *Energy Grants (Cleaner Fuels) Scheme Act 2004* (EGCFS 2004) to remove grants for renewable diesel and biodiesel from 1 July 2015.

Context of amendments

1.3 Excise duty is levied on fuel ethanol and biodiesel at the rates set out in the ETA 1921. References in this chapter to fuel ethanol are to denatured ethanol for use in an internal combustion engine. References to biofuels are to fuel ethanol and biodiesel. Currently, the rate of excise for these biofuels is the same as the rate of excise for petrol and diesel.

1.4 Grants are available for entities that manufacture fuel ethanol, biodiesel and renewable diesel in Australia. Grants are also available for entities that import biodiesel and renewable diesel. The rate of the grant for biodiesel and renewable diesel is equal to the rate of duty for diesel. The grants scheme for biodiesel and renewable diesel is established under the EGCFS 2004, while the grant for fuel ethanol is determined contractually by the Australian Government.

1.5 The measures result in significant Budget savings.

Summary of new law

1.6 The amendments reduce the rates of excise duty for domestically manufactured fuel ethanol and biodiesel to nil for one-year from 1 July 2015.

1.7 The rates of excise duty for domestically manufactured fuel ethanol and biodiesel then increase on 1 July of each subsequent year until the final rates are reached on 1 July 2020. The final rate of excise duty for domestically manufactured biodiesel is set so that it will be 50 per cent of the excise duty rate for diesel. The final excise duty rate for domestically manufactured fuel ethanol is set so that it will be approximately 33 per cent of the excise duty rate for petrol. No changes are made to the rates of excise—equivalent customs duty for fuel ethanol and biodiesel.

1.8 The amendments also remove grants for biodiesel and renewable diesel from 1 July 2015.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<i>Changes to excise duty rate for domestically manufactured fuel ethanol</i>	
<p>The rate of excise duty for domestically manufactured fuel ethanol is reduced to zero on 1 July 2015.</p> <p>The excise rate is then set for later financial years as a percentage of the excise rate for petrol, as follows:</p> <ul style="list-style-type: none"> • 6.554% for the financial year starting on 1 July 2016; • 13.108% for the financial year starting on 1 July 2017; • 19.662% for the financial year starting on 1 July 2018; • 26.216% for the financial year starting on 1 July 2019; and • 32.77% for the financial year starting on 1 July 2020 and later financial years. 	<p>The rate of excise duty for domestically manufactured fuel ethanol is the same as the excise rate for petrol.</p>

<i>New law</i>	<i>Current law</i>
<i>Changes to excise duty rate for domestically manufactured biodiesel</i>	
<p>The rate of excise duty for domestically manufactured biodiesel is reduced to zero on 1 July 2015.</p> <p>The excise rate is then set in later financial years as a percentage of the excise rate for diesel, as follows:</p> <ul style="list-style-type: none"> • 10% for the financial year starting on 1 July 2016; • 20% for the financial year starting on 1 July 2017; • 30% for the financial year starting on 1 July 2018; • 40% for the financial year starting on 1 July 2019; and • 50% for the financial year starting on 1 July 2020 and later financial years. 	<p>The rate of excise duty for domestically manufactured biodiesel is the same as the excise rate for diesel.</p>
<i>End of grants scheme for biodiesel and renewable diesel</i>	
<p>Claimants are only entitled to a grant for biodiesel or renewable diesel that has been manufactured in Australia or imported into Australia if their provisional entitlement to the grant arises before 1 July 2015. For example, no entitlement arises if biodiesel or renewable diesel was entered or delivered into home consumption after 30 June 2015.</p>	<p>Claimants are entitled to grants for the manufacture or importation of biodiesel or renewable diesel.</p>

Detailed explanation of new law

Excise duty rates for fuel ethanol and biodiesel

1.9 The Government has announced separate measures changing the excise treatment of fuel ethanol and biodiesel. These measures reduce the rates of excise duty for domestically manufactured fuel ethanol and biodiesel to zero on 1 July 2015.

1.10 The rates of excise duty for domestically manufactured fuel ethanol and biodiesel then rise in stages on 1 July of each following financial year until reaching their final rates on 1 July 2020. The rates of excise duty are to be calculated as a percentage of the rate of excise duty for petrol and diesel. [Schedule 1, item 4 of the Excise Tariff Amendment Bill 2015, subsections 6H(1) and 6J(1) of the ETA 1921]

1.11 The table below shows the rates of excise duty for domestically manufactured fuel ethanol and biodiesel as a percentage of the excise rate for petrol and diesel.

Table 1.1: Excise rates for fuel ethanol and biodiesel as a percentage of the excise rate for petrol and diesel

<i>Financial year</i>	<i>Excise rate for domestically manufactured fuel ethanol as a percentage of the excise rate for petrol (%)</i>	<i>Excise rate for domestically manufactured biodiesel as a percentage of the excise rate for diesel (%)</i>
<i>1 July 2015 to 30 June 2016</i>	0	0
<i>1 July 2016 to 30 June 2017</i>	6.554	10
<i>1 July 2017 to 30 June 2018</i>	13.108	20
<i>1 July 2018 to 30 June 2019</i>	19.662	30
<i>1 July 2019 to 30 June 2020</i>	26.216	40
<i>1 July 2020 to 30 June 2021 or a later financial year</i>	32.770	50

1.12 The rate of duty that is collected on petrol and diesel is subject to indexation under *Excise Tariff Proposal (No 1) 2014* and *Customs Tariff Proposal (No 1) 2014*. Subject to the passage of legislation to ratify these proposals, indexation will apply to fuel ethanol and biodiesel because they are set as a percentage of the petrol and diesel rate of duty.

1.13 Under section 59 of the *Excise Act 1901* the excise duty that applies to excisable goods, including domestically manufactured biofuels, is imposed at the rate in force on the earlier of the day when the goods are delivered for home consumption under section 61C of the *Excise Act 1901* or the day that payment of the duty is made.

1.14 The Excise Tariff Amendment Bill 2015 ensures that the relevant rate of excise duty in force for biofuels on 1 July 2015 is zero. The rates then increase annually on 1 July as a proportion of the excise rates for petrol and diesel respectively, until 1 July 2020, when the final rates for domestically manufactured fuel ethanol and biodiesel apply. *[Schedule 1, item 4 of the Excise Tariff Amendment Bill 2015, subsections 6H(1) and (2) and 6J(1) and (2) of the ETA 1921]*

Example 1.1: Calculating the excise duty rate on biofuels manufactured after 30 June 2015

An ethanol producer manufactures fuel ethanol in Australia on 30 June 2016 and delivers the fuel ethanol for home consumption on that day. The producer pays duty after 30 June 2016 using their periodic settlement permission issued under section 61C of the *Excise Act 1901*. A nil rate of excise duty applies to the fuel ethanol.

A biodiesel producer manufactures biodiesel in Australia on 30 June 2017 but does not deliver the biodiesel for home consumption or pay duty until 10 July 2017. Excise duty applies to the biodiesel at the rate of 20 per cent of the diesel excise duty rate that applies at the time of delivery of the biodiesel for home consumption on 10 July 2017.

1.15 On 1 July 2020, the rate of excise duty for fuel ethanol will be equal to approximately 33 per cent of the rate of excise duty for petrol. On 1 July 2020, the rate of excise duty for domestically manufactured biodiesel will be set at 50 per cent of the rate of excise duty for diesel. The rate of excise duty takes into account the energy content of the biofuels, which are classified into low, medium and high energy content bands. Petrol, diesel and biodiesel are within the high energy content band. Fuel ethanol has approximately 65 per cent of the energy content of petrol and accordingly is within the medium energy content band. *[Schedule 1, item 4 of the Excise Tariff Amendment Bill 2015, table item 6 of subsection 6H(1) and table item 6 of subsection 6J(1) of the ETA 1921]*

1.16 The excise duty rate for domestically manufactured fuel ethanol and biodiesel is calculated by multiplying the excise duty rate for petrol and diesel respectively by the relevant factor. The resulting excise duty rates are then rounded to three decimal places of a dollar (equivalent to one decimal place of a cent). The third decimal place is rounded up if the fourth decimal place is five or more. *[Schedule 1, item 4, Excise Tariff Amendment Bill 2015, subsections 6H(1) and 6J(1) of the ETA 1921]*

Example 1.2: Calculating the excise duty rates on 1 July of each year

Assume that on 1 July 2016 the excise duty rate for petrol and diesel is \$0.395 per litre.

The excise duty rate for fuel ethanol applying on 1 July 2016 would be \$0.026 per litre ($\$0.395 \times 0.06554 = \0.0258 per litre, which, rounded to three decimal places of a dollar, is \$0.026).

The excise duty rate for biodiesel commencing on 1 July 2016 would be \$0.04 per litre ($\$0.395 \times 0.1000 = \0.0395 per litre, which rounded to three decimal places of a dollar is \$0.04).

Excise duty for fuel ethanol

1.17 Fuel ethanol continues to be separately classified under the ETA 1921. The amendments include provisions for working out the relevant rate of duty that applies. *[Schedule 1, items 3, 6 and 8 of the Excise Tariff Amendment Bill 2015, subsection 6G(1) of the ETA 1921, table subitem 10.11 and cell at table subitem 10.20 in the column headed 'Rate of Duty' of the Schedule to the ETA 1921]*

1.18 The amendments ensure that, from 1 July 2015, the rate of excise duty applying to domestically manufactured fuel ethanol is calculated as a percentage (see rates in Table 1.1 above) of the rate of excise duty that applies to petrol at that time. The rate is determined by rounding the duty rate expressed in dollars to three decimal places (the third decimal place is rounded up if the fourth decimal place is five or more). *[Schedule 1, item 4 of the Excise Tariff Amendment Bill 2015, subsection 6H(1) of the ETA 1921]*

Ethanol Production Grant Program

1.19 The contractually-based Ethanol Production Grant Program ceases from 1 July 2015.

Excise duty for biodiesel

1.20 The amendments ensure that, from 1 July 2015, the rate of excise duty applying to domestically manufactured biodiesel is calculated as a percentage (see rates in Table 1.1 above) of the rate of excise duty that applies to diesel at that time. *[Schedule 1, items 5, 7 and 9 of the Excise Tariff Amendment Bill 2015, table subitems 10.10, 10.12 and 10.21 of the Schedule to the ETA 1921]*

1.21 The rate is determined by rounding the duty rate to three decimal places of a dollar (the third decimal place is rounded up if the fourth decimal place is five or more). [*Schedule 1, item 4 of the Excise Tariff Amendment Bill 2015, subsection 6J(1) of the ETA 1921*]

Biodiesel — definition

1.22 The amendments define ‘biodiesel’ in the ETA 1921 as mono-alkyl esters of fatty acids of a kind used as a fuel, derived from animal or vegetable fats or oils whether or not used. That is, the fats or oils can be new, used or recycled. [*Schedule 1, items 1 and 2 of the Excise Tariff Amendment Bill 2015, definitions of ‘biodiesel’ and ‘diesel’ in subsection 3(1) of the ETA 1921*]

1.23 For the purposes of consistency, the definition of ‘biodiesel’ in the ETA 1921 aligns with the existing definition in subheading note 5 to Chapter 27 and note 7 to chapter 38 of the *Customs Tariff Act 1995*, and the current international definition developed by the World Customs Organization.

Biodiesel and renewable diesel grants

1.24 The amendments also repeal the EGCFS 2004. As a result, grant entitlements under the scheme are no longer available for biodiesel and renewable diesel manufactured or imported into Australia from 1 July 2015. [*Schedule 1, item 13 of the Energy Grants Amendment Bill 2015, EGCFS 2004*]

Blending of imported biofuels

1.25 The amendments do not change the rate of excise-equivalent customs duty that applies to imported fuel ethanol and biodiesel. Accordingly, they continue to be subject to the full rate of excise-equivalent customs duty that applies to diesel and petrol. However, section 105B of the *Customs Act 1901* allows excise-equivalent customs duty to be extinguished on excise-equivalent goods that are subject to warehousing broadly if the goods are to be used in excise manufacture. This reflects that excise duty will instead be payable under the excise system on the goods.

1.26 The rates of excise-equivalent customs duty that apply to biofuels are different to the corresponding excise duty rates. Accordingly, the Energy Grants Amendment Bill 2015 amends the *Customs Act 1901* to ensure that excise-equivalent customs duty cannot be extinguished on imported fuel ethanol and biodiesel. Similarly, if a blend of fuel is imported that contains a biofuel, then excise-equivalent customs duty is payable on the biofuels component of the blend at the rate in force at the

time of blending in dual licensed premises (premises to which a licence applies under excise and customs law). *[Schedule 1, items 1 to 6 of the Energy Grants Amendment Bill 2015, subsections 105B(1), (1A), (2) and (3) and paragraph 105C(2)(b) of the Customs Act 1901]*

1.27 This ensures that it is not possible to effectively remove or reduce the duty liability for biofuels imported from 1 July 2015 by blending the imported biofuel with excisable fuel.

1.28 However, this does not apply when imported biofuels are blended with other biofuels or used in the manufacture of fuel blends on or before 30 June 2015. Where fuels have been blended on or before 30 June 2015, the excise-equivalent customs duty is extinguished and the relevant domestic rate of duty in force applies to the entire fuel blend on the day when the goods are delivered for home consumption or the day duty is paid, if earlier.

1.29 When imported biofuels are blended in Australia with other biofuels that are either domestically manufactured or imported or the imported biofuels are used in the manufacture of fuel blends after 30 June 2015, the imported biofuels component of the blend is subject to the excise-equivalent customs duty rate in force at the time at which the imported biofuel is blended (see Example 1.4).

1.30 Section 6G of the ETA 1921 applies so that after 30 June 2015, excise duty is calculated on any locally manufactured fuels that are blended with imported biofuels on the basis that:

- the domestic fuel component of the blend attracts the relevant domestic excise duty rate in force on the day when the goods are delivered for home consumption or the day duty is paid, if earlier; and
- the imported biofuels component of the blend that has already been subject to excise-equivalent customs duty is treated as if the applicable rate of excise duty that applies to locally manufactured biofuel was paid at the time of blending with the domestic fuel.

1.31 Treating the biofuels component of a blend that has been subject to excise-equivalent customs duty upon importation as instead having had excise duty paid ensures that the operation of section 6G of the ETA 1921 does not result in any reduction in the effective rate of duty that the imported biofuel has borne.

Example 1.3: Calculating the duty rate on the manufacture of fuel blends made before 1 July 2015 that contain imported biofuels

A fuel manufacturer imports biodiesel into Australia prior to 1 July 2015 and stores the biodiesel under bond in a dual licensed warehouse. No duty is payable at the time of importation as the biodiesel is subject to blending and the excise-equivalent customs duty liability is extinguished at this point. The biodiesel is blended a further time prior to 1 July 2015 in the warehouse with diesel to produce B20. The fuel blend is delivered into home consumption on 10 July 2015 and duty is paid after this time. The biodiesel component of the fuel blend is subject to the zero rate of excise duty that is in force on 10 July 2015 and the diesel component attracts the diesel rate of duty in force on that day.

Example 1.4: Calculating the duty rate on the manufacture of fuel blends made after 30 June 2015 that contain imported biofuels

A fuel manufacturer imports biodiesel into Australia on 1 July 2016 and also stores the biodiesel under bond in a dual licensed warehouse on that date. The biodiesel is subject to the rate of excise-equivalent customs duty in force on 1 July 2016 when the biodiesel was blended with locally manufactured biodiesel. The biodiesel is then further blended in the warehouse with diesel to produce B20. The fuel blend is delivered into home consumption on 10 July 2016 and excise duty is paid after this time. For the purposes of calculating the duty liability on the entire blend, the diesel component of the blend is subject to the diesel rate of excise duty in force on 10 July 2016 and the biodiesel component is treated as having had excise duty paid at 10 per cent of the diesel excise duty rate in force on 10 July 2016.

Blending exemption

1.32 Under subsection 77H(1) of the *Excise Act 1901*, an exemption from excise duty applies where fuels (other than biofuels) are blended together and excise or excise-equivalent customs duty has been paid at the same rate on the separate fuel components. The amendments remove the existing requirement that biofuel blends that have been subject to duty cannot be blended with other duty-paid fuels without being subject to the operation of section 6G of the ETA 1921. This removes existing restrictions on the blending of biofuels that have been subject to duty. *[Schedule 1, item 8 of the Energy Grants Amendment Bill 2015, subsection 77H(2) of the Excise Act 1901]*

1.33 The amendments also ensure that the exemption from the operation of the blending rule in section 6G also applies where biofuels have been subject to different rates of duty because of:

- the phase-in of duty rates each year on Australian manufactured biofuels from 1 July 2016; or
- where no duty is payable on Australian-manufactured biofuels because they are subject to duty in the period 1 July 2015 to 30 June 2016.

[Schedule 1, items 7 and 8 of the Energy Grants Amendment Bill 2015, paragraph 77H(1)(a) and subsection 77H(2) of the Excise Act 1901]

Consequential amendments

Calculation of fuel tax credits

Biofuels and higher ratio biofuel blends

1.34 The amendments require that fuel tax credits for fuel ethanol, and biodiesel and blends including those biofuels that exceed the prescribed maximum percentage of biofuels are calculated as if these fuels had been subject to the excise rate of duty, regardless of whether the fuel was locally manufactured or imported. *[Schedule 1, item 9, Energy Grants Amendment Bill 2015, subsection 43-7(7) of the Fuel Tax Act 2006]*

1.35 This ensures consistency with the existing operation of the fuel tax credit provisions concerning fuel blends containing fuel ethanol. This approach provides certainty for fuel tax credit claimants.

Example 1.5: Fuel tax credits for higher ratio biodiesel blends

On 4 July 2015, Camille Corporation imports 200 litres of biodiesel and 200 litres of diesel and then blends both fuels together so that there are 400 litres of fuel containing 50 per cent biodiesel and 50 per cent diesel (B50) for use in its off-road mining operations.

Camille Corporation must claim fuel tax credits on the basis that the biodiesel component of the blend has been subject to excise duty because it is treated for fuel tax credit purposes as if it was manufactured in Australia. As a result, Camille Corporation may claim fuel tax credits for:

- the diesel component of the blend at the applicable diesel rate (assumed to be 38.9 cents for each litre of diesel — on the basis of *Excise Tariff Proposal (No 1) 2014* and *Customs Tariff Proposal (No 1) 2014* and that legislation is passed ratifying these proposals); and
- the biodiesel component of the blend at the rate applying to domestically manufactured biodiesel (nil — calculated as 0 per cent of the diesel rate).

In total, Camille Corporation is entitled to fuel tax credits of \$77.80 for the 400 litres of B50 (200 litres of diesel at 38.9 cents per litre and 200 litres of biodiesel at 0 cents per litre).

In September 2016, Camille Corporation imports 2,000 litres of diesel and 2,000 litres of biodiesel and blends them to produce 4,000 litres of B50 to run its off-road extraction machinery.

Once again, Camille Corporation must claim fuel tax credits on the basis that the biodiesel component of the B50 blend had been manufactured in Australia and is subject to excise rather than excise-equivalent customs duty. As a result, Camille Corporation may claim fuel tax credits for:

- the diesel component of the blend at the applicable diesel rate (assumed to be 40 cents per litre); and
- the biodiesel component of the blend at the applicable excise rate for domestically manufactured biodiesel (10 per cent of the applicable diesel rate — 4 cents per litre).

Accordingly, Camille Corporation is entitled to fuel tax credits of \$880 (2,000 litres of diesel at 40 cents per litre and 2,000 litres of biodiesel at 4 cents per litre).

Example 1.6: Fuel tax credits for lower ratio biodiesel blends

On 1 July 2015, Marguerite Corporation acquires a blend of biodiesel and diesel containing 80 per cent diesel and 20 per cent biodiesel (B20) from Fuel Producer Co for use in its off-road seasonal agricultural activities.

As the amount of biodiesel in the blend does not exceed the prescribed maximum percentage of 20 per cent, the blend is treated as being entirely made of diesel for the purpose of claiming fuel tax credits. Marguerite Corporation can claim fuel tax credits at the fuel tax credit rate of 38.9 cents per litre applying to diesel acquired between 2 February 2015 and 31 July 2015 (it is assumed that legislation is enacted ratifying *Excise Tariff Proposal (No 1) 2014* and *Customs Tariff Proposal (No 1) 2014*). It is not relevant for the purpose of claiming the fuel tax credits if the biodiesel forming part of the B20 blend was imported or manufactured in Australia.

Next year, on 15 July 2016, Marguerite Corporation again acquires a B20 blend of biodiesel for use in the same off-road seasonal agricultural activities.

This blend continues to be treated as being entirely made of diesel for the purpose of claiming fuel tax credits so the rate of excise applying to locally manufactured biodiesel is not relevant.

Marguerite Corporation can claim fuel tax credits at the relevant duty rate for diesel that applies on 15 July 2016.

Consequential amendments to the repeal of the *Energy Grants (Cleaner Fuels) Scheme Act 2004*

1.36 The amendments remove a reference to the *Energy Grants (Credits) Scheme Act 2003* (EGCS 2003) in the general anti-avoidance provision in the *Fuel Tax Act 2006* as the EGCS 2003 was repealed on 1 July 2012. *[Schedule 1, item 10 of the Energy Grants Amendment Bill 2015, subparagraph 75-15(1)(c)(iv) of the Fuel Tax Act 2006]*

1.37 A number of other consequential amendments are made to the *Fuel Tax Act 2006*, the *Product Grants and Benefits Administration Act 2000* and the *Taxation Administration Act 1953* as a result of the repeal of the EGCS 2004. *[Schedule 1, items 15 to 24 of the Energy Grants Amendment Bill 2015, section 43-1 and subsections 43-5(3), 43-10(1), 43-10(2) and 43-10(6) of the Fuel Tax Act 2006, definition of 'cleaner fuel' in section 5, table item 4 in section 8, subsection 9(5), sections 16A and 27B of the Product Grants and Benefits Administration Act 2000 and table item 1 in subsection 355-65(7) in Schedule 1 to the Taxation Administration Act 1953]*

Other consequential amendments

1.38 A reference in the *Coastal Trading (Revitalising Australian Shipping) Act 2012* to the definition of biodiesel contained in the EGCS 2004 is repealed and replaced with the definition included in the ETA 1921. *[Schedule 1, item 14 of the Energy Grants Amendment Bill 2015, paragraph (a) of the definition of 'liquid fuel product' in subsection 6(1) of the Coastal Trading (Revitalising Australian Shipping) Act 2012]*

Application and transitional provisions

1.39 The amendments to the ETA 1921 contained in the Excise Tariff Amendment Bill 2015 apply to goods manufactured on or after 1 July 2015 and also to goods held at licensed premises on 1 July 2015 for which no duty had been paid prior to that day. The first change in excise duty rates applies from 1 July 2015. *[Schedule 1, item 4 of the Excise Tariff Amendment Bill 2015, sections 6H and 6J of the ETA 1921]*

1.40 The removal of the grants for biodiesel and renewable diesel under the EGCFs 2004 applies from 1 July 2015. Under the transitional provisions, the EGCFs 2004 and related instruments in force on 30 June 2015 continue to operate for entitlements that arose prior to 1 July 2015. This ensures that entitlement to grants for biodiesel and renewable diesel continues if provisional entitlement to a cleaner fuel grant arose before 1 July 2015. *[Subclause 2(1) in table item 1 and Schedule 1, items 13, 26 and 28 of the Energy Grants Amendment Bill 2015]*

1.41 Accordingly, claimants of grants for biodiesel and renewable diesel must have entered or delivered the fuel into home consumption by 30 June 2015 or if another entity has already entered the fuel, the claimant must have used or sold the fuel by 30 June 2015. This ensures that no grants are payable for biodiesel or renewable diesel that is subject to duty (or a zero rate of duty) from 1 July 2015. Fuel is entered or delivered into home consumption when the fuel is consumed by an importer, manufacturer or licensed person or sold by them to an end user outside the excise system.

1.42 Producers and importers who are eligible for grants where entitlement arises prior to 1 July 2015 are required to submit their claims for grants to the Commissioner of Taxation by the earlier of:

- the day which is three years after the start of the claim period; and
- 1 July 2016.

[Schedule 1, items 25 and 27 of the Energy Grants Amendment Bill 2015]

Example 1.7: Final claims under the Energy Grants (Cleaner Fuels) Scheme

Sebastien makes a claim under the EGCFs 2004 for a grant for biodiesel that has been imported into Australia and blended with mineral diesel that has been manufactured in Australia.

Sebastien became provisionally entitled to a grant when the biodiesel blend is delivered for home consumption on 30 June 2015 — the point at which it is delivered from the importer's licensed premises to a service station for sale.

Provided Sebastien has made his claim before 30 June 2016, he is entitled to claim the grant under the scheme.

1.43 The amendments to the *Customs Act 1901* that ensure that any imported biofuels are subject to excise-equivalent customs duty, regardless of whether they are subject to blending with excisable fuels in licensed premises, apply to biofuels that are imported either:

- on or after 1 July 2015; or
- before 1 July 2015, if the time for working out the import duty has not yet arisen on or before 1 July 2015.

[Schedule 1, items 1 to 6 and subitem 11(1) of the Energy Grants Amendment Bill 2015, subsections 105B(1), (1A), (2) and (3) and paragraph 105C(2)(b) of the Customs Act 1901]

1.44 The amendments to the existing requirement that biofuels that have been subject to duty cannot be blended without this being considered excise manufacture and the related consequential amendments apply to biofuels that are:

- manufactured in Australia or imported into Australia on or after 1 July 2015;
- manufactured in Australia before 1 July 2015 but on which no duty had been paid as the biofuels were either still subject to Chief Executive Officer (CEO) control on 1 July 2015 or held in licensed premises on that day; or
- imported before 1 July 2015, if the time for working out the import duty for the biofuels had not yet arisen on or before 1 July 2015.

[Schedule 1, items 7 and 8 and subitem 11(2) of the Energy Grants Amendment Bill 2015, paragraph 77H(1)(a) and subsection 77H(2) of the Excise Act 1901]

1.45 The amendments that require fuel tax credits for biofuel blends exceeding a prescribed maximum percentage to be worked out as if these fuels had been subject to the excise rate of duty apply to:

- taxable fuels acquired in Australia on or after 1 July 2015;
- taxable fuels manufactured in Australia or imported into Australia on or after 1 July 2015; and
- taxable fuels manufactured in Australia before 1 July 2015 that on that day are subject to the CEO's control or held or owned by the fuel manufacturer where no duty had been paid on the fuel before that day.

[Schedule 1, item 9 and subitem 11(3) of the Energy Grants Amendment Bill 2015, section 43-1 and subsection 43-7(7) of the Fuel Tax Act 2006]

Transitional provisions — anti-avoidance

1.46 The amendments include a transitional provision concerning the repeal of the reference to the EGCS 2003 in the general anti-avoidance provision in the *Fuel Tax Act 2006*. The transitional provision ensures that the operation of the anti-avoidance provision is not affected by the repeal in relation to a fuel tax benefit an entity received for a grant under the EGCS 2003. *[Schedule 1, item 12 of the Energy Grants Amendment Bill 2015]*

Commencement

1.47 The Energy Grants Amendment Bill 2015, including the repeal of the EGCS 2004, commences on 1 July 2015. *[Table item 1 of subclause 2(1) of the Energy Grants Amendment Bill 2015]*

1.48 The Excise Tariff Amendment Bill 2015 also commences on 1 July 2015, which is the date from which the first change in rates of excise duty for biofuels applies. *[Subclause 2(1) of the Excise Tariff Amendment Bill 2015]*

1.49 However, the changes to excise duty rates for biofuels are contingent on the repeal of the EGCS 2004. This ensures that the changes in duty rates commence as a single package. *[Table item 2 of subclause 2(1) of the Excise Tariff Amendment Bill 2015]*

STATEMENT OF COMPATABILITY WITH HUMAN RIGHTS

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

Excise Tariff Amendment (Ethanol and Biodiesel) Bill 2015

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

Overview

1.51 The Excise Tariff Amendment (Ethanol and Biodiesel) Bill 2015 amends the *Excise Tariff Act 1921* to reduce the rate of excise for biodiesel and fuel ethanol to zero for the year commencing on 1 July 2015. Excise rates for biodiesel then phase in each year from 1 July 2016 until the excise rate is equivalent to 50 per cent of the excise rate for diesel on 1 July 2020. Excise rates for fuel ethanol also phase in each year from 1 July 2016 until the excise rate is equivalent to approximately 33 per cent of the excise rate for petrol on 1 July 2020.

Human rights implications

1.52 This Bill does not engage any of the applicable rights or freedoms.

Conclusion

1.53 This Bill is compatible with human rights as it does not raise any human rights issues.

Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Bill 2015

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

Overview

1.55 The Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Bill 2015 repeals the *Energy Grants (Cleaner Fuels) Scheme Act 2004* to remove grants for renewable diesel and biodiesel from 1 July 2015.

Human rights implications

1.56 This Bill does not engage any of the applicable rights or freedoms.

Conclusion

1.57 This Bill is compatible with human rights as it does not raise any human rights issues.

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Excise Tariff Amendment (Ethanol and Biodiesel) Bill 2015

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Items 3, 6 and 8 of the Excise Tariff Amendment Bill 2015, subsection 6G(1) of the ETA 1921, table subitem 10.11 and cell at table subitem 10.20 in the column headed 'Rate of Duty' of the Schedule to the ETA 1921	1.17
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Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Bill 2015

Clauses

<i>Bill reference</i>	<i>Paragraph number</i>
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Schedule 1: Amendments

<i>Bill reference</i>	<i>Paragraph number</i>
Table item 1 in subclause 2(1) of the Energy Grants Amendment Bill 2015	1.47
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