

2013-2014-2015

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EXCISE TARIFF AMENDMENT (FUEL INDEXATION) BILL 2015
CUSTOMS TARIFF AMENDMENT (FUEL INDEXATION) BILL 2015
FUEL INDEXATION (ROAD FUNDING) SPECIAL ACCOUNT BILL 2015
FUEL INDEXATION (ROAD FUNDING) BILL 2015

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer, the Hon J. B. Hockey MP and the
Minister for Immigration and Border Protection, the Hon Peter Dutton MP)

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Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
ACCC	Australian Competition and Consumer Commission
ATO	Australian Taxation Office
AWOTE	Average Weekly Ordinary Time Earnings
CNG	Compressed natural gas
COAG	Council of Australian Governments
CPI	Consumer Price Index
Customs Fuel Indexation Bill 2015	Customs Tariff Amendment (Fuel Indexation) Bill 2015
Excise Fuel Indexation Bill 2015	Excise Tariff Amendment (Fuel Indexation) Bill 2015
Fuel Indexation Consequential Bill 2015	Fuel Indexation (Road Funding) Bill 2015
Fuel Indexation Special Account Bill 2015	Fuel Indexation (Road Funding) Special Account Bill 2015
LNP	Liquefied natural gas
LPG	Liquefied petroleum gas
SES	Senior Executive Service
Tariff Proposals	Excise Tariff Proposal (No. 1) 2014 and Customs Tariff Proposal (No. 1) 2014

General outline and financial impact

CPI indexation of fuel excise and excise-equivalent customs duty

The Excise Tariff Amendment (Fuel Indexation) Bill 2015 and the Customs Tariff Amendment (Fuel Indexation) Bill 2015 amend the *Excise Tariff Act 1921* and the *Customs Tariff Act 1995* to index the rate of excise and excise-equivalent customs duty applying to fuels (other than aviation fuels) to assist in funding investment in road infrastructure.

The effect of the Excise Tariff Amendment (Fuel Indexation) Bill 2015 and the Customs Tariff Amendment (Fuel Indexation) Bill 2015 is to validate the Excise Tariff Proposal (No. 1) 2014 and Customs Tariff Proposal (No. 1) 2014 (Tariff Proposals) that were tabled in the House of Representatives on 30 October 2014 to index fuel duty to the consumer price index (CPI) from 10 November 2014.

The Fuel Indexation (Road Funding) Special Account Bill 2015 establishes a special account to ensure that the net additional revenue from the reintroduction of fuel indexation is used for road infrastructure funding.

The Fuel Indexation (Road Funding) Bill 2015 makes consequential amendments, including amending the *Fuel Tax Act 2006* to ensure that the road user charge rate that is determined is rounded in the same way as fuel duty rates are rounded.

Date of effect: The amendments apply to duty on domestically manufactured and imported fuel with effect from 10 November 2014.

The provisions which establish a special account for the net additional revenue from fuel indexation are linked to the commencement of the amendments to duty on fuel. The special account is first credited after the end of the 2014-15 financial year once the net revenue collected for that financial year can be calculated.

Proposal announced: The measure to reintroduce fuel indexation from 1 August 2014 was announced by the Treasurer in the 2014-15 Budget on 13 May 2014.

In the then Acting Assistant Treasurer's Media Release (MC 107/14) of 28 October 2014, it was announced that Tariff Proposals would be used to give practical effect to the Budget measure, with a delayed start date of 10 November 2014.

The Tariff Proposals were tabled in Parliament on 30 October 2014.

Financial impact: The measure is estimated to result in a gain to revenue in net terms over the forward estimates period of \$3,598 million in underlying cash balance terms, comprising:

<i>2014-15</i>	<i>2015-16</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>
\$123m	\$430m	\$675m	\$1,040m	\$1,330m

Note: financial impacts are in underlying cash balance terms.

Human rights implications: These Bills do not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 1, paragraphs 1.98 to 1.113.

Compliance cost impact: The measure imposes a moderate increase in compliance costs for fuel manufacturers and importers, as well as fuel tax credit claimants.

Summary of regulation impact statement

The regulation impact statement in Chapter 2 is the same regulation impact statement that was included in the Explanatory Memorandum for the Excise Tariff Amendment (Fuel Indexation) Bill 2014, the Customs Tariff Amendment (Fuel Indexation) Bill 2014, the Fuel Indexation (Road Funding) Special Account Bill 2014 and the Fuel Indexation (Road Funding) Bill 2014, that were introduced to Parliament on 19 June 2014. The policy intent of this package of Bills to index fuel duty to the CPI remains the same.

Regulation impact on business

Impact: Moderate.

Main points:

- Some of the fuel manufacturers and importers in the Australian market are likely to require an update to their systems in order to accommodate the biannual indexation of fuel duty rates.

- There will also be ongoing costs associated with the twice-yearly change in the fuel duty rate for all remitters of fuel excise and excise-equivalent customs duty.
- The majority of the change in the compliance costs for businesses with entitlements to fuel tax credits is borne by entities who submit their Business Activity Statements on a quarterly or annual basis. These entities will be required to organise purchases of fuels between purchases before and after the indexation date, in order to properly account for their fuel tax credit entitlement.

Chapter 1

CPI indexation of fuel excise and excise-equivalent customs duty

Outline of chapter

1.1 The Excise Tariff Amendment (Fuel Indexation) Bill 2015 (Excise Fuel Indexation Bill 2015) and the Customs Tariff Amendment (Fuel Indexation) Bill 2015 (Customs Fuel Indexation Bill 2015) amend the *Excise Tariff Act 1921* and the *Customs Tariff Act 1995* to index the rate of excise and excise-equivalent customs duty applying to fuels (other than aviation fuels) to assist in funding investment in road infrastructure.

1.2 The effect of the Excise Fuel Indexation Bill 2015 and the Customs Fuel Indexation Bill 2015 is to validate the Excise Tariff Proposal (No. 1) 2014 and Customs Tariff Proposal (No. 1) 2014 (Tariff Proposals) that were tabled in the House of Representatives on 30 October 2014 to index fuel duty to the consumer price index (CPI) from 10 November 2014.

1.3 The Fuel Indexation (Road Funding) Special Account Bill 2015 (Fuel Indexation Special Account Bill 2015) establishes a special account to ensure that the net additional revenue from the reintroduction of fuel indexation is used for road infrastructure funding.

1.4 The Fuel Indexation (Road Funding) Bill 2015 (Fuel Indexation Consequential Bill 2015) makes consequential amendments, including amending the *Fuel Tax Act 2006* to ensure that the road user charge rate that is determined is rounded in the same way as fuel duty rates are rounded.

Context of amendments

1.5 Excise and excise-equivalent customs duty are levied on fuel at the rates set out in the *Excise Tariff Act 1921* and the *Customs Tariff Act 1995*. Indexation of the rates of excise and excise-equivalent customs duty applying to fuel under these Acts ceased in 2001. As a result, the real value of excise and excise-equivalent customs duty collections has decreased each year.

1.6 The Government introduced the Excise Tariff Amendment (Fuel Indexation) Bill 2014, the Customs Tariff Amendment (Fuel Indexation) Bill 2014, the Fuel Indexation (Road Funding) Special Account Bill 2014 and the Fuel Indexation (Road Funding) Bill 2014 to Parliament on 19 June 2014. The package of Bills sought to give effect to the 2014-15 Budget announcement to reintroduce fuel indexation from 1 August 2014.

1.7 However this package of Bills did not receive passage in time to implement the measure from 1 August 2014. Therefore to give practical effect to the Budget decision, on 30 October 2014 the Government tabled the Tariff Proposals in the House of Representatives. The Tariff Proposals authorise the Commissioner of Taxation and the Comptroller-General of Customs to collect higher rates of fuel duty from 10 November 2014, which are indexed in line with CPI movements on 2 February 2015¹ and 1 August 2015 respectively. The Tariff Proposals authorise the collection of the higher indexed rates of duty until 29 October 2015.²

1.8 The *Tax and Superannuation Laws Amendment (2014 Measures No. 6) Act 2014* amended the *Fuel Tax Act 2006* and the *Energy Grants (Cleaner Fuels) Scheme Regulations 2004* to ensure that changes to the amounts of excise and excise-equivalent customs duty payable as a result of any tariff proposals tabled in Parliament, are taken into account in calculating the amount of fuel tax credits and any entitlement to the cleaner fuels grant for biodiesel and renewable diesel.

1.9 This ensures that:

- entities that use fuel in their businesses for certain activities are entitled to claim fuel tax credits based on the rate of applicable duty less any rebates or grants that apply at that time; and

1 Indexation generally occurs on 1 February and 1 August (the indexation day), where the indexation number is published by the Australian Bureau of Statistics at least five days before the indexation day. If there is a delay in publication, the indexation day is the fifth day after the publication day. The indexation number for the December 2014 quarter was released on 28 January 2015, therefore the fixed rate of \$0.386 per litre applies until and including 1 February 2015, and indexation of the rate of duty occurs on and from 2 February 2015 (the fifth day after publication). See paragraphs 1.23 to 1.25.

2 The Tariff Proposals authorise the collection of the higher rates of duty for 12 months from the date the Tariff Proposals are tabled. This period expires at midnight on 29 October 2015.

- grants³ are available for entities that manufacture, and in some cases import, biodiesel, renewable diesel and fuel ethanol equal to the rate of duty for these fuels at that time.

1.10 If the collection of the higher rates of duty under the Tariff Proposals is not validated by the enactment of legislation by 29 October 2015,⁴ then:

- the Commissioner of Taxation and the Comptroller-General of Customs would be required to:
 - cease collecting the higher rate of duty on 30 October 2015; and
 - refund the additional duty attributable to the Tariff Proposals paid by fuel duty remitters (principally petroleum manufacturers and petroleum importers);
- fuel tax credit claimants and biodiesel and renewable diesel grant claimants would be required to repay to the Commissioner of Taxation the part of:
 - fuel tax credits paid that are attributable to the Tariff Proposals (business users of heavy on road vehicles or off road business use); and
 - grants paid in relation to biodiesel and renewable diesel that are attributable to the Tariff Proposals.
- manufacturers of fuel ethanol that have claimed grants under the Ethanol Production Grants Program would be required to repay grants to the Commonwealth that are attributable to the Tariff Proposals.

Summary of new law

1.11 The amendments increase the rate of excise and excise-equivalent customs duty applying to fuels (other than aviation fuels) from 10 November 2014. The effect of the package of Bills is to validate the Tariff Proposals that were tabled in the House of

3 The Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Bill 2015 will repeal entitlement to grants for biodiesel and renewable diesel from 1 July 2015. Entitlement to grants under the Ethanol Production Grants Program ceases from 1 July 2015.

4 See footnote 2.

Representatives on 30 October 2014 to index fuel duty to the CPI from 10 November 2014.

Fuel (other than gaseous fuels)

1.12 From 10 November 2014 until 1 February 2015, the rate of excise and excise-equivalent customs duty on fuel (other than gaseous fuels) is \$0.386 per litre. From 2 February 2015⁵ to 31 July 2015, the indexed rate for fuel (other than gaseous fuels) is \$0.389 per litre.

1.13 This reflects that from 2 February 2015⁶, the duty on fuel is indexed in line with changes in the CPI. Indexation occurs twice a year, generally on 1 February⁷ and 1 August.

Gaseous fuels

1.14 The excise and excise-equivalent customs duty rate from 1 July 2014 until 10 November 2014 for liquefied natural gas (LNG) and compressed natural gas (CNG) is \$0.209 per kilogram, and for liquefied petroleum gas (LPG) is \$0.10 per litre.

1.15 From 10 November 2014 until 1 February 2015,⁸ these rates proportionally increase based on the liquid fuel duty rate of \$0.386 per litre. For LNG and CNG, the rate of duty is \$0.212 per kilogram, and for LPG the rate of duty is \$0.101 per litre.

1.16 From 2 February 2015,⁹ the duty on gaseous fuels is indexed in line with changes in the CPI. Indexation occurs twice a year, generally on 1 February and 1 August.

1.17 From 2 February 2015¹⁰ to 30 June 2015, the indexed rate for LNG and CNG is \$0.213 per kilogram, and for LPG is \$0.102 per litre.

1.18 From 1 July 2015, the indexed rate of duty on gaseous fuels takes into account the scheduled increase as a result of the final phase-in of taxation on gaseous fuels. From 1 July 2015 to 31 July 2015, the rate for LNG and CNG is \$0.266 per kilogram, and the rate for LPG is \$0.127 per litre.

5 See footnote 1.

6 See footnote 1.

7 See footnote 1.

8 See footnote 1.

9 See footnote 1.

10 See footnote 1.

1.19 Regular indexation of gaseous fuel, in line with changes in the CPI, applies twice a year from 1 August 2015.

Special account

1.20 The additional net revenue from the reintroduction of fuel indexation is included in a special account established by the Fuel Indexation Special Account Bill 2015. The balance of the special account can only be used for road infrastructure funding.

Other amendments

1.21 The Fuel Indexation Consequential Bill 2015 makes consequential amendments, including amending the *Fuel Tax Act 2006* to ensure that the road user charge rate that is determined is rounded in the same way as fuel duty rates are rounded.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<i>Indexation of duty on fuel</i>	
The rate of excise and excise-equivalent duty on fuels, including gaseous fuels, is indexed. This generally occurs on 1 February and 1 August of each year. No indexation occurs for aviation fuels, production of stabilised crude oil and condensate, or petroleum-based oils and greases.	The rate of excise and excise-equivalent customs duty on fuels is not indexed under enacted legislation. However, under Tariff Proposals tabled in the House of Representatives on 30 October 2014, the Commissioner of Taxation and the Comptroller-General of Customs are authorised to collect higher rates of fuel duty from 10 November 2014 which is indexed in line with CPI movements until 29 October 2015. ¹¹

11 See footnote 2.

Excise Tariff Amendment (Fuel Indexation) Bill 2015, Customs Tariff Amendment (Fuel Indexation) Bill 2015, Fuel Indexation (Road Funding) Special Account Bill 2015, Fuel Indexation (Road Funding) Bill 2015

<i>New law</i>	<i>Current law</i>
<i>Rounding of duty rate</i>	
The indexed rates of excise and excise-equivalent customs duty for fuels (excluding aviation fuel and the other petroleum products listed above) are rounded to one decimal place of a cent.	No equivalent. Duty rates for fuels are generally expressed to three decimal places of a cent. However, under Tariff Proposals tabled in the House of Representatives on 30 October 2014, the Commissioner of Taxation and the Comptroller-General of Customs are authorised to round the rates of additional duty payable to one decimal place of a cent in the period 10 November 2014 until 29 October 2015. ¹²
<i>Road user charge</i>	
The road user charge rate that is determined is also rounded to one decimal place of a cent.	No equivalent.
<i>Special account for additional net revenue from fuel indexation</i>	
The net additional revenue from reintroducing fuel indexation is credited to a special account and amounts are debited from the account only for the purpose of road infrastructure funding.	No equivalent.

Detailed explanation of new law

Indexation of the rates of excise and excise-equivalent customs duty for fuel

1.22 This measure applies indexation to the rates of excise and excise-equivalent customs duty applying to fuels (other than aviation fuels). The measure maintains the real value of excise and excise-equivalent customs duty collections. The additional revenue is used to fund investment in road infrastructure.

12 See footnote 2.

1.23 Fuel indexation operates in a similar way to the indexation of the rates of excise and excise-equivalent customs duty applying to alcohol. Generally, indexation occurs on 1 February and 1 August each year and is based on changes in the CPI as published by the Australian Bureau of Statistics. *[Schedule 1 of Excise Fuel Indexation Bill 2015, items 20 to 25, subsections 6A(1), (2), (5), (6), (8) and (9) of the Excise Tariff Act 1921, Schedule 1 of the Customs Fuel Indexation Bill 2015, items 3 to 9, subsections 19(1), (2), (5), (6), (8), (9) and (10) of the Customs Tariff Act 1995]*

1.24 However, in some situations indexation comes into effect one or a number of days later than the indexation day of 1 February or 1 August.

1.25 This is because under subsection 6A(5) of the *Excise Tariff Act 1921* and subsection 19(5) of the *Customs Tariff Act 1995*, if the CPI index number is published by the Australian Bureau of Statistics less than five days before the indexation day (1 February or 1 August), indexation applies from the fifth day after the release of the CPI index number. This is the case for the February 2015 indexation day, where the index number was published on the 28 January 2015 and accordingly, indexation applies from 2 February 2015.

1.26 Indexation applies to the following fuels:

- petroleum condensate and stabilised crude petroleum oil used as a fuel;
- topped crude petroleum oil;
- refined or semi-refined liquid products derived from petroleum;
- liquid hydrocarbon products;
- gaseous fuels:
 - LPG;
 - LNG and CNG;

- denatured ethanol (fuel ethanol) for use in an internal combustion engine;¹³
- biodiesel; and
- blends of the above products.

[Schedule 1 of Excise Fuel Indexation Bill 2015, item 26, subsection 6A(10) of the Excise Tariff Act 1921, Schedule 1 of the Customs Fuel Indexation Bill 2015, item 9, subsection 19(10) of the Customs Tariff Act 1995]

1.27 The effect of the Excise Fuel Indexation Bill 2015 and the Customs Fuel Indexation Bill 2015 is to validate the Tariff Proposals that were tabled in the House of Representatives on 30 October 2014 to index fuel duty to the CPI from 10 November 2014.

Aviation fuels

1.28 Indexation does not apply to the rates of excise and excise-equivalent customs duty applying to aviation fuels as the net excise and excise-equivalent customs duty collected from aviation fuels is hypothecated to fund the Civil Aviation Safety Authority. Also indexation does not apply for certain imported goods to the component of the duty rate that is calculated as a percentage of the value of the goods. *[Schedule 1 of Customs Fuel Indexation Bill 2015, item 1, section 19AAC of Customs Tariff Act 1995]*

Stabilised crude oil and condensate

1.29 The duty payable on petroleum products is generally worked out by applying duty at a set rate of cents per litre or kilogram of the product.

1.30 However, duty on production of stabilised crude oil and condensate under items 20 and 21 of the Schedule to the *Excise Tariff Act 1921* is calculated as a percentage of the weighted-average selling price of product from the production field. Accordingly, indexation does not apply to the production of stabilised crude oil and condensate under items 20 and 21.

Blends of fuel

1.31 Indexation applies to blends of fuels. The rate of excise duty for fuel blends is determined by using a five-step process. First, the entity

13 Note: the application of indexation to the rate of excise-equivalent customs duty for fuel ethanol is delayed, see paragraph 1.85.

calculates the duty that would be payable on each fuel constituent in the blend. The appropriate duty rate is the rate at the time that duty on the blend is payable and takes into account indexation. *[Schedule 1 of Excise Fuel Indexation Bill 2015, item 28, method statement step 1 in subsection 6G(1) of the Excise Tariff Act 1921]*

1.32 The second and third steps require the entity to determine the volume of fuel that is not attributable to one of the fuel constituents or to water, and to calculate the duty payable on these non-fuel constituents. The rate of duty is the same as the indexed rate of duty that applies to petrol and diesel in item 10 of the Schedule to the *Excise Tariff Act 1921*. *[Schedule 1 of Excise Fuel Indexation Bill 2015, items 26 and 29, subsection 6A(10) and method statement at the end of step 3 of subsection 6G(1) of the Excise Tariff Act 1921]*

1.33 The fourth step in subsection 6G(1) of the *Excise Tariff Act 1921* requires the entity to add the duty calculated in steps 1 and 3. Finally, the entity subtracts any duty that has already been paid.

Example 1.1: Duty on fuel blends where duty has been paid on a constituent at the same rate

A manufacturer makes a solvent blend to a customer’s specification from 10,000 litres of toluene and 100 litres of a synthetic performance enhancer on 21 January 2016. Duty was paid on the toluene on 21 December 2015. Assume that the CPI indexed rate for toluene on 1 August 2015 is 39.5 cents per litre.

Toluene is classified to subitem 10.25 of the Schedule to the *Excise Tariff Act 1921*. The synthetic performance enhancer is not classified in its own right in the Schedule to the *Excise Tariff Act 1921*.

For the purpose of this example, the blend is classified to subitem 10.30 of the Schedule to the *Excise Tariff Act 1921* (assume that the blend is not excluded from subitem 10.30 by the operation of section 77J of the *Excise Act 1901*). The duty on the blend is calculated under subsection 6G(1) of the *Excise Tariff Act 1921* as follows:

Step 1	10,000 litres of toluene × 39.5 cents per litre	\$3,950.00
<hr/>		
Step 2	100 litres of synthetic performance enhancer	
<hr/>		
Step 3	100 litres × 39.5 cents per litre	\$39.50
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Step 4	Add the amounts in steps 1 and 3	\$3,989.50
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Step 5	Less duty paid (10,000 litres × 39.5 cents)	<u>-\$3,950.00</u>

per litre)	
Duty payable on the blend	<u>\$39.50</u>

Example 1.2: Duty on fuel blends where duty has been paid on a constituent at a lower rate

Assume the same facts as in Example 1.1 but that the duty was paid on the toluene on 21 June 2015 at a rate of 38.9 cents per litre. The duty on the blend is calculated as follows:

Step 1	10,000 litres of toluene × 39.5 cents per litre	\$3,950.00
Step 2	100 litres of synthetic performance enhancer	
Step 3	100 litres × 39.5 cents per litre	\$39.50
Step 4	Add the amounts in steps 1 and 3	\$3,989.50
Step 5	Less duty paid (10,000 litres × 38.9 cents)	<u>-\$3,890.00</u>
	Duty payable on the blend	<u>\$99.50</u>

Initial duty rate period and transitional matters

Fuel duty (other than gaseous fuels)

1.34 From 10 November 2014 until 1 February 2015,¹⁴ the rate of excise and excise-equivalent customs duty on fuel (other than gaseous fuels) is set at \$0.386 per litre. [*Schedule 1 of Excise Fuel Indexation Bill 2015, items 1 to 9 and 13 to 18, subsection 6G(1) and subitems 10.1, 10.2, 10.3, 10.5, 10.10, 10.15, 10.16, 10.18, 10.20, 10.21, 10.25, 10.26, 10.27, 10.28 of the Schedule to the Excise Tariff Act 1921, Schedule 1 of the Customs Fuel Indexation Bill 2015, item 1, paragraph 19AAB(1)(a) of the Customs Tariff Act 1995*]

1.35 This is the rate indexed to the CPI and set by the Tariff Proposals following delays in the passage of the legislation to re-introduce indexation on 1 August 2014.

14 See footnote 1.

1.36 From 2 February 2015,¹⁵ the rate of excise and excise-equivalent customs duty on fuel (other than gaseous fuels) is indexed in line with changes in the CPI. The indexed rate from 2 February 2015 is \$0.389 per litre. Indexation occurs twice a year, generally on 1 February and 1 August.

Gaseous fuels

1.37 The excise and excise-equivalent customs duty rate from 1 July 2014 until 9 November 2014 for LNG and CNG is \$0.209 per kilogram, and for LPG is \$0.10 per litre.

1.38 From 10 November 2014 until 1 February 2015,¹⁶ these rates proportionally increase based on the fixed liquid fuel duty rate of \$0.386 per litre dividing by the previous liquid fuel duty rate of \$0.38143. For LNG and CNG, the rate of duty for the above period is \$0.212 per kilogram (calculated as $\$0.386/\$0.38143 \times \$0.209$ per kilogram), and for LPG the rate of duty is \$0.101 per litre (calculated as $\$0.386/\$0.38143 \times \$0.10$ per litre). [*Schedule 1 of Excise Fuel Indexation Bill 2015, items 10 to 12, subitems 10.19A, 10.19B and 10.19C of the Schedule to the Excise Tariff Act 1921, Schedule 1 of the Customs Fuel Indexation Bill 2015, item 1, paragraphs 19AAB(1)(b), (c) and (d) of the Customs Tariff Act 1995*]

1.39 From 2 February 2015,¹⁷ the duty on gaseous fuels is indexed (indexation factor of 1.007) in line with changes in the CPI. For the period 2 February 2015 until 30 June 2015 a duty rate of \$0.213 per kilogram of duty applies for LNG and CNG and duty rate of \$0.102 per litre applies for LPG. Indexation occurs twice a year, generally on 1 February and 1 August.¹⁸

1.40 However, on 1 July 2015 under the *Excise Tariff Amendment (Taxation of Alternative Fuels) Act 2011* and the *Customs Tariff Amendment (Taxation of Alternative Fuels) Act 2011* the rate of duty for LNG and CNG was scheduled to increase to \$0.2613 per kilogram, and the rate of duty for LPG was scheduled to increase to \$0.125 as part of the final stage of the phase-in of taxation on gaseous fuels.

1.41 The applicable rates of duty on gaseous fuels from 1 July 2015 to 31 July 2015 take into account these scheduled increases and the effect of the indexation.

15 See footnote 1.

16 See footnote 1.

17 See footnote 1.

18 See footnote 1.

1.42 For LNG and CNG, the duty rate from 1 July 2015 to 31 July 2015 is \$0.266 per kilogram. This is calculated based on:

- Step one – the rate of \$0.2613 per kilogram proposed in *Excise Tariff Amendment (Taxation of Alternative Fuels) Act 2011* and the *Customs Tariff Amendment (Taxation of Alternative Fuels) Act 2011* is subject to indexation based on the increase in duty on 10 November 2014 as a proportion of the liquid fuel duty rate (calculated as $\$0.386/\$0.38143 \times \$0.2613$ per kilogram = \$0.2644); and
- Step two – the rate of \$0.2644 per kilogram is subject to February 2015 indexation¹⁹ (calculated as $106.6/105.9$ (1.007 rounded up to three decimal places) \times \$0.2644 per kilogram = \$0.266 (rounded down to three decimal places)).

1.43 For LPG the duty rate from 1 July 2015 to 31 July 2015 is \$0.127 per litre. This is calculated based on:

- Step one – the rate of \$0.125 per litre proposed in *Excise Tariff Amendment (Taxation of Alternative Fuels) Act 2011* and the *Customs Tariff Amendment (Taxation of Alternative Fuels) Act 2011* is subject to indexation based on the increase in duty on 10 November 2014 as a proportion of the liquid fuel duty rate (calculated as $\$0.386/\$0.38143 \times \$0.125$ per litre = \$0.126); and
- Step two – the rate of \$0.126 per litre is subject to February 2015 indexation²⁰ (calculated as $106.6/105.9$ (1.007 rounded up to three decimal places) \times \$0.126 per kilogram = \$0.127 (rounded up to three decimal places)).

[Schedule 1 of Excise Fuel Indexation Bill 2015, item 31, section 6FAA of the Excise Tariff Act 1921, Schedule 1 of the Customs Fuel Indexation Bill 2015, item 13, section 19AD of the Customs Tariff Act 1995]

Rounding of duty payable

1.44 The indexed rates of excise and excise-equivalent customs duty for fuels (excluding aviation fuels) are rounded to one decimal place of a cent. This simplifies the fuel tax credit claim calculation for claimants of fuels such as petrol and diesel that currently have a rate of duty calculated to three decimal places of a cent (otherwise expressed as five decimal

19 See footnote 1.

20 See footnote 1.

places of a dollar). *[Schedule 1, item 27 of the Excise Fuel Indexation Bill 2015, subsection 6AAA(1), (3) and (4) of the Excise Tariff Act 1921, Schedule 1, item 10 of the Customs Fuel Indexation Bill 2015, section 19AAA of the Customs Tariff Act 1995]*

1.45 The rounding rules in subsection 6A(2) of the *Excise Tariff Act 1921* and subsection 19(2) of the *Customs Tariff Act 1995* still apply for the purposes of calculating the CPI indexed rate of duty for each indexation period. Accordingly, the calculation of CPI indexed rates uses rates expressed to three decimal places of a cent for fuels such as petrol and diesel, but with the result of the calculation rounded to one decimal place of a cent. *[Schedule 1, item 27 of Excise Fuel Indexation Bill 2015, subsections 6AAA(2), (3) and (4) of the Excise Tariff Act 1921, Schedule 1, item 10 of Customs Fuel Indexation Bill, subsection 19AAA(2) of the Customs Tariff Act 1995]*

Example 1.3: Calculating rounding of indexed duty payable on diesel

On 1 August 2015 CPI indexation applies. Assume that the indexation factor for 1 August 2015 is 1.014.

The CPI indexed duty rate that applies from 1 August 2015 is calculated by multiplying the indexation factor by the duty rate for the February 2015 indexation, expressed to 3 decimal places of a cent (38.870 cents per litre x 1.014 = 39.41418 cents per litre. The result of this calculation is then rounded down (as the 2nd decimal place is less than 5) to one decimal place of a cent being 39.4 cents per litre). The rate to be used for the February 2016 indexation calculation is rounded down to 39.414 cents per litre as the 4th decimal place is less than 5.

Accordingly, the CPI indexed duty rate for diesel on 1 August 2015 is 39.4 cents per litre (or \$0.394 per litre).

On 1 February 2016 CPI indexation applies. Assume that the indexation factor for 1 February 2016 is 1.009.

The CPI indexed duty rate that applies from 1 February 2016 is calculated by multiplying the indexation factor by the duty rate for 1 August 2015 but which is expressed to 3 decimal places of a cent (39.414 cents per litre x 1.009 = 39.7687 cents per litre). The result of this calculation is then rounded up (as the 2nd decimal place is 5 or more) to one decimal place of a cent being 39.8 cents per litre. The rate to be used for the August 2016 indexation calculation is 39.769 cents per litre as the 4th decimal place is 5 or more it is rounded up).

Accordingly, the CPI indexed duty rate for diesel on 1 February 2016 is 39.8 cents per litre (or \$0.398 per litre).

Special account for additional net revenue from fuel indexation

1.46 The Fuel Indexation Special Account Bill 2015 establishes a special account called the Fuel Indexation (Road Funding) special account. *[Schedule 1, section 7 of Fuel Indexation Special Account Bill 2015]*

1.47 A special account is a mechanism that sets aside an amount within the Commonwealth's Consolidated Revenue Fund. The amount in the special account must be expended for a particular purpose.

1.48 The purpose of the special account established by the Fuel Indexation Special Account Bill 2015 is to ensure that the additional net revenue collected from the reintroduction of fuel indexation is used to fund road infrastructure investment. The additional net revenue is calculated by determining the excise and excise-equivalent customs duty collected as a result of the reintroduction of fuel indexation and subtracting the estimated amount of fuel tax credits, grants and other similar amounts that are payable to the extent they relate to the additional duty collected from reintroducing fuel indexation. *[Schedule 1, section 9 of Fuel Indexation Special Account Bill 2015]*

1.49 The Fuel Indexation Special Account Bill 2015 extends to external Territories and binds the Crown in each of its capacities. However, it does not make the Crown liable to be prosecuted for an offence. *[Schedule 1, sections 5 and 6 of the Fuel Indexation Special Account Bill 2015]*

Simplified outline

1.50 The simplified outline in the Fuel Indexation Special Account Bill 2015 is designed to assist readers by describing the main provisions in the legislation in general terms. *[Schedule 1, section 3 of the Fuel Indexation Special Account Bill 2015]*

1.51 As the outline is not intended to be comprehensive it is important to rely on the substantive provisions.

Credits to the special account

1.52 The Treasurer determines, in writing, the amount to credit to the special account. This results in a credit from the Consolidated Revenue Fund to the special account equal to the amount of the determination. *[Schedule 1, subsection 8(1) of the Fuel Indexation Special Account Bill 2015]*

1.53 The determination must state that a specified amount is credited to the special account on a specified day. *[Schedule 1, subsection 8(1) of the Fuel Indexation Special Account Bill 2015]*

1.54 The Treasurer must have regard to the purpose of the special account when making the determination. This ensures that the amount of the determination is an estimate of the net additional revenue from the reintroduction of fuel indexation. *[Schedule 1, subsection 8(2) of the Fuel Indexation Special Account Bill 2015]*

1.55 The determination must be made as soon as practicable after 1 July each year once the net additional revenue from fuel indexation for the immediately preceding financial year can be determined. In practice,

the Treasurer can only estimate the net additional revenue from fuel indexation several months after the end of the financial year once Business Activity Statements, which include fuel tax credit claims, have been lodged and grant and rebate claims have been made. *[Schedule 1, paragraph 8(4)(b) of the Fuel Indexation Special Account Bill 2015]*

1.56 The Treasurer must make only one determination a year. The Fuel Indexation Special Account Bill 2015 does not exclude the general power to amend a determination in subsection 33(3) of the *Acts Interpretation Act 1901*. Nevertheless, it is not anticipated that the Treasurer would vary the amount of a determination. Any adjustments that occur to duty collections or grant, credit or rebate claims after a determination is made are reflected in the amount worked out for the next year's determination. *[Schedule 1, paragraph 8(4)(a) of the Fuel Indexation Special Account Bill 2015]*

1.57 The determination is administrative in character and would not ordinarily be considered to be a legislative instrument. However, for the purposes of transparency, it has been decided that the determination should be treated as a legislative instrument under the *Legislative Instruments Act 2003* despite its administrative character. This ensures that the determination is published on the Federal Register of Legislative Instruments. *[Schedule 1, subsection 8(3) of the Fuel Indexation Special Account Bill 2015]*

1.58 The Treasurer does not have a broad discretion to determine the amount to credit to the special account as the Treasurer must have regard to the purpose of the account and the amount of net additional revenue from fuel indexation. Decisions which are administrative in character and non-discretionary are not generally treated as disallowable legislative instruments. Accordingly, given the administrative nature of the determination, the provisions ensure that the determination is not disallowable under section 42 of the *Legislative Instruments Act 2003*. *[Schedule 1, subsection 8(3) of the Fuel Indexation Special Account Bill 2015]*

1.59 Treating the determination as not disallowable minimises uncertainty. The risk of disallowance would delay decisions to apply the amounts in the special account for road infrastructure funding until after the disallowance period had expired. Delays would also occur if the instrument was disallowed and arrangements needed to be put in place for remaking a revised instrument or legislation needed to be passed to give effect to the intended operation of the determination.

Debits from the special account

1.60 The balance of the special account must be used to make grants of financial assistance to the States and Territories for the purpose of investing in road infrastructure. *[Schedule 1, section 9 of the Fuel Indexation Special Account Bill 2015]*

1.61 The Commonwealth has the power to make conditional grants of financial assistance to the States and Territories under sections 96 and 122 of the Australian Constitution. The terms and conditions of the grant must be set out in a written agreement between the Commonwealth and the relevant States and Territories. A Commonwealth Minister has the power to enter into the agreement on behalf of the Commonwealth. *[Schedule 1, section 11 of the Fuel Indexation Special Account Bill 2015]*

1.62 The Commonwealth makes grants of financial assistance to the States and Territories through the COAG Reform Fund special account established under the *COAG Reform Fund Act 2008*. Funds are payable from the Fuel Indexation (Road Funding) special account in accordance with the existing payment processes.

1.63 When a payment is to be made to a State or Territory for road infrastructure in accordance with the relevant written agreement, the Infrastructure Minister directs, in writing, that a specified amount is to be debited from the special account and credited to the COAG Reform Fund special account. *[Schedule 1, subsection 10(1) of the Fuel Indexation Special Account Bill 2015]*

1.64 The declaration enables the amounts to be debited from the COAG Reform Fund for the purpose of making a specified grant of financial assistance to the States and Territories. This debiting should occur as soon as practicable. *[Schedule 1, subsection 10(2) and (3) of the Fuel Indexation Special Account Bill 2015]*

1.65 The Infrastructure Minister may make multiple directions in the same year and in the same document. This differs from determinations made by the Treasurer which may only be made once a year. The Infrastructure Minister makes periodic transfers as road infrastructure payments become due throughout the year in accordance with the relevant written agreement. *[Schedule 1, subsection 10(4) of the Fuel Indexation Special Account Bill 2015]*

1.66 The Infrastructure Minister's directions are not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* as they are administrative in character. *[Schedule 1, subsection 10(5) of the Fuel Indexation Special Account Bill 2015]*

1.67 The Infrastructure Minister is defined as the Minister that is responsible for the administration of the *Infrastructure Australia Act 2008*. *[Schedule 1, section 4 of the Fuel Indexation Special Account Bill 2015]*

1.68 After the funds have been transferred from the special account to the COAG Reform Fund special account following the Infrastructure Minister's direction, the funds will then be paid to the States and Territories as part of the normal regular payments from the

COAG Reform Fund special account. The Treasurer must ensure that these funds are paid to the States and Territories as soon as practicable after the amount is credited to the COAG Reform Fund special account. *[Schedule 1, section 11 of the Fuel Indexation Special Account Bill 2015]*

Delegation

1.69 The Infrastructure Minister may, by writing, delegate the Minister's functions to the Secretary of the Infrastructure Department, or a Senior Executive Service (SES) employee or an acting SES employee in the Department. A delegation power is necessary and appropriate as the Minister is required to make periodic declarations throughout each year as grants are made. *[Schedule 1, section 13 of the Fuel Indexation Special Account Bill 2015]*

1.70 The Treasurer may delegate, in writing, the debiting of the COAG Reform Fund special account to the Secretary to the Treasury or an SES employee, or acting SES employee in the Department. *[Schedule 1, section 14 of the Fuel Indexation Special Account Bill 2015]*

1.71 The Treasurer does not need a power to delegate the determination of the amounts to be credited to the special account because these determinations are made only once a year.

1.72 The Infrastructure Department is defined as the Department administered by the Infrastructure Minister while the Treasury Department is defined as the Department administered by the Treasurer. The terms SES employee and acting SES employee have the meaning set out in section 2B of the *Acts Interpretation Act 1901*. *[Schedule 1, section 4 of the Fuel Indexation Special Account Bill 2015]*

Reporting requirements and rule-making power

1.73 There are no specific reporting requirements in the Fuel Indexation Special Account Bill 2015 as Budget Paper No. 4 sets out the estimated cash flows and balances of all special accounts for the relevant year.

1.74 The Minister (responsible for the Fuel Indexation Special Account Bill 2015, as enacted) may make rules prescribing matters required or permitted to be prescribed by the rules, necessary or convenient to be prescribed for giving effect to the Fuel Indexation Special Account Bill 2015. *[Schedule 1, section 15 of the Fuel Indexation Special Account Bill 2015]*

Consequential amendments

1.75 A note is added to section 5 of the *COAG Reform Fund Act 2008*. The note sets out that amounts may be credited to the

COAG Reform Fund special account under the Fuel Indexation Special Account Bill 2015. *[Schedule 1, item 1 of the Fuel Indexation Consequential Bill 2015, subsection 5(2) of the COAG Reform Fund Act 2008]*

1.76 A consequential amendment is made to the Fuel Indexation (Road Funding) Special Account Bill 2015 to reflect the renaming of the *Legislative Instruments Act 2003* to the *Legislation Act 2003* under the *Acts and Instruments (Framework Reform) Act 2015*. *[Schedule 1, item 2 of the Fuel Indexation Consequential Bill 2015, subsection 8(3) of the Fuel Indexation (Road Funding) Special Account Act 2015]*

1.77 An amendment is also made to the *Excise Act 1901* to ensure that a fuel is not classified as a blend and subject to duty if parts of the fuel attracted a different rate of duty only because of indexation. *[Schedule 2, item 1 of the Fuel Indexation Consequential Bill 2015, paragraph 77H(2)(2AA) of the Excise Act 1901]*

1.78 An amendment is also made to provide that a determination made by the Transport Minister setting the rate of the road user charge must be rounded to one decimal place of a cent for each litre of fuel. This ensures that the road user charge is rounded in the same way as fuel duty rates are rounded. *[Schedule 3, item 1 of the Fuel Indexation Consequential Bill 2015, subsection 43-10(11A) of the Fuel Tax Act 2006]*

1.79 The Excise Tariff Amendment (Ethanol and Biodiesel) Bill 2015 provides that the rate of excise duty for fuel ethanol and biodiesel is not directly contained in subitems 10.20 and 10.21 of the Schedule to the *Excise Tariff Act 1921*. Instead the rate of duty is determined by applying the method to be set out in sections 6H (for fuel ethanol) and 6J (for biodiesel) which are to be included in the *Excise Tariff Act 1921* by the Excise Tariff Amendment (Ethanol and Biodiesel) Bill 2015.

1.80 Accordingly, a consequential amendment is made to ensure that the provisions that apply fuel indexation to excise duty on fuel ethanol and biodiesel reflect that the duty rate that applies under subitems 10.20 and 10.21 is calculated by reference to the method contained in sections 6H and 6J. This consequential amendment is contingent on the commencement of Schedule 1 to the *Excise Tariff Amendment (Ethanol and Biodiesel) Act 2015*. *[Schedule 2 of the Excise Fuel Indexation Bill 2015, items 1 and 2, subsection 6A(10) and subparagraph 6AAA(3)(a)(ii) of the Excise Tariff Act 1921]*

1.81 Amendments are also made which are contingent on the commencement of Schedule 1 to the *Excise Tariff Amendment (Ethanol and Biodiesel) Act 2015* and the *Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Act 2015* respectively to:

- make minor changes to the notes following subsections 6H(1) and 6J(1) that are to be included in the *Excise Tariff Act 1921* by

the Excise Tariff Amendment (Ethanol and Biodiesel) Bill 2015;
and

- reflect that grants will no longer be paid under the *Energy Grants (Cleaner Fuels) Scheme Act 2004* from 1 July 2015 as a result of the intended repeal of that Act and therefore will not be included from 1 July 2015 in the calculation of the fuel indexation amount to be transferred to the COAG Reform Fund.

[Schedule 2 of the Excise Fuel Indexation Bill 2015, items 3 and 4, notes at the end of subsections 6H(1) and 6J(1) of the Excise Tariff Act 1921, Schedule 1 of Fuel Indexation Consequential Bill 2015, item 3, subparagraph 9(2)(b)(i) of the Fuel Indexation Special Account Bill 2015]

1.82 A transitional provision is also included to ensure that the calculation of the fuel indexation amount to be transferred to the COAG Reform Fund will continue to take into account any provisional entitlement to grants under the *Energy Grants (Cleaner Fuels) Scheme Act 2004* that arose prior to 1 July 2015. This ensures that where grants are paid after 30 June 2015 in recognition of an entitlement that existed prior to the repeal of the grant scheme, then these grants will be correctly taken into account in determining the fuel indexation amount to be transferred to the COAG Reform Fund. The operation of the transitional provision is contingent on the commencement of the *Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Act 2015* which will repeal the *Energy Grants (Cleaner Fuels) Scheme Act 2004*. *[Schedule 1 of the Fuel Indexation Consequential Bill 2015, item 4]*

Application and transitional provisions

Application provisions

Fuel duty (other than gaseous fuels)

1.83 The set rate of excise and excise-equivalent customs duty on fuel (other than gaseous fuels) of \$0.386 per litre applies from 10 November 2014 until 1 February 2015. *[Schedule 1, clause 2 of the Excise Fuel Indexation Bill 2015, Schedule 1, item 2 of the Customs Fuel Indexation Bill 2015]*

1.84 Due to the effect in the delay of publication of the index number for the December 2014 quarter, CPI indexation of excise and excise-equivalent customs duty on fuel applies to goods manufactured or produced in Australia, or imported into Australia, after 1 February 2015.²¹

21 See footnote 1.

It also applies to goods imported into Australia, or manufactured or produced in Australia before 1 February 2015 on which no duty has been paid, and on 1 February 2015 the goods either were subject to the Comptroller-General of Custom's control, or were in the stock, custody or possession of, or belonged to, a manufacturer or producer of the goods. *[Schedule 1, item 30 of the Excise Fuel Indexation Bill 2015, Schedule 1, item 12 of the Customs Fuel Indexation Bill 2015]*

1.85 CPI indexation of excise-equivalent customs duty applies to imported fuel ethanol for use as fuel in an internal combustion engine from the seventh day after the day of Royal Assent. Indexation was not applied to excise-equivalent customs duty for fuel ethanol as part of the Tariff Proposals. *[Schedule 2, clause 2 and item 2 of the Customs Fuel Indexation Bill 2015]*

Gaseous fuels

1.86 The set rate of excise and excise-equivalent customs duty for gaseous fuels (\$0.212 per kilogram for LNG and CNG and \$0.101 per litre for LPG) applies from 10 November 2014 until 1 February 2015. *[Schedule 1, clause 2 and item 19 of the Excise Fuel Indexation Bill 2015, Schedule 1, clause 2 and item 2 of the Customs Fuel Indexation Bill 2015]*

1.87 Due to the effect in the delay of publication of the index number for the December 2014 quarter, CPI indexation of excise and excise-equivalent customs duty on gaseous fuels applies to goods manufactured or produced in Australia, or imported into Australia, after 1 February 2015.²² It also applies to goods imported into Australia, or manufactured or produced in Australia before 1 February 2015 on which no duty has been paid, and on 1 February 2015 the goods either were subject to the Comptroller-General of Custom's control, or were in the stock, custody or possession of, or belonged to, a manufacturer or producer of the goods. *[Schedule 1, clause 2 and item 30 of the Excise Fuel Indexation Bill 2015, Schedule 1, clause 2 and item 12 of the Customs Fuel Indexation Bill 2015]*

1.88 The duty rate of \$0.266 per kilogram for LNG and CNG and \$0.127 per litre for LPG applies from 1 July 2015 to 31 July 2015. *[Schedule 1, clause 2 and item 32 of the Excise Fuel Indexation Bill 2015, Schedule 1, clause 2 and item 14 of the Customs Fuel Indexation Bill 2015]*

Impact of retrospective amendments to fuel duty

1.89 Although, the amendments apply retrospectively from 10 November 2014, there is no adverse effect on taxpayers. This is because the amendments validate the rate of duty that has already been

22 See footnote 1.

collected by the Commissioner of Taxation and the Comptroller-General of Customs since 10 November 2014 under the Tariff Proposals. If the amendments are not enacted, duty paid will need to be refunded to fuel duty remitters (principally petroleum manufacturers and importers), and claimants of fuel tax credits and fuel ethanol, biodiesel and renewable diesel grants will be required to repay the additional amount of fuel tax credits and grants that are attributable to the Tariff Proposals.

Special account

1.90 The commencement of the Fuel Indexation Special Account Bill 2015 establishing the special account is linked to the commencement of the Excise Fuel Indexation Bill 2015 and the Customs Fuel Indexation Bill 2015.

1.91 The Treasurer must make a determination for credits to the special account for each financial year starting on or after 1 July 2014. This ensures that the special account which sets aside net revenue from fuel indexation can be first credited with an amount after the end of the 2014-15 financial year once the net revenue collected for the 2014-15 financial year can be calculated. *[Clause 2 and subsection 8(4) of the Fuel Indexation Special Account Bill 2015]*

Consequential Bill

1.92 The consequential amendment that inserts a note into the *COAG Reform Fund Act 2008* commences on Royal Assent. *[Clause 2 of the Fuel Indexation Consequential Bill 2015]*

1.93 The consequential amendment to the *Fuel Indexation (Road Funding) Special Account Act 2015* concerning the renaming of the *Legislative Instruments Act 2003* to the *Legislation Act 2003* commences on the later of the commencement of the *Fuel Indexation (Road Funding) Special Account Act 2015* and the *Acts and Instruments (Framework Reform) Act 2015*. *[Clause 2 of the Fuel Indexation Consequential Bill]*

1.94 The consequential amendment to the *Excise Act 1901* concerning blending commences on 10 November 2014. *[Clause 2 of the Fuel Indexation Consequential Bill 2015]*

1.95 The consequential amendment that provides that a determination made by the Transport Minister setting the rate of the road user charge must be rounded to one decimal place of a cent for each litre of fuel applies to determinations made under the *Fuel Tax Act 2006* on or after Royal Assent. *[Schedule 3, item 2 of the Fuel Indexation Consequential Bill 2015]*

1.96 The amendments to the *Excise Tariff Act 1921* that are contingent on the commencement of Schedule 1 to the *Excise Tariff Amendment (Ethanol and Biodiesel) Act 2015* commence immediately after that Schedule. *[Clause 2 of the Excise Fuel Indexation Bill 2015]*

1.97 The amendments to the Fuel Indexation Special Account Bill 2015 that are contingent on the commencement of the *Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Act 2015* commence on the later of the commencement of:

- section 9 of the *Fuel Indexation (Road Funding) Special Account Act 2015*; and
- the *Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Act 2015*.

[Clause 2 of the Fuel Indexation Consequential Bill 2015]

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Excise Tariff Amendment (Fuel Indexation) Bill 2015

1.98 The Excise Tariff Amendment (Fuel Indexation) Bill 2015 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

1.99 The Excise Tariff Amendment (Fuel Indexation) Bill 2015 amends the *Excise Tariff Act 1921* to index the rate of excise applying to fuels to fund investment in road infrastructure.

Human rights implications

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

Conclusion

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

Customs Tariff Amendment (Fuel Indexation) Bill 2015

1.102 The Customs Tariff Amendment (Fuel Indexation) Bill 2015 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

1.103 The Customs Tariff Amendment (Fuel Indexation) Bill 2015 amends the *Customs Tariff Act 1995* to index the rate of excise-equivalent customs duty applying to fuels to fund investment in road infrastructure.

Human rights implications

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

Conclusion

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

Fuel Indexation (Road Funding) Special Account Bill 2015

1.106 The Fuel Indexation (Road Funding) Special Account Bill 2015 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

1.107 The Fuel Indexation (Road Funding) Special Account Bill 2015 establishes a special account to ensure that the net additional revenue from fuel indexation is used for road infrastructure investment.

Human rights implications

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

Conclusion

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

Fuel Indexation (Road Funding) Bill 2015

1.110 The Fuel Indexation (Road Funding) Bill 2015 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

1.111 The Fuel Indexation (Road Funding) Bill 2015 makes consequential amendments, including amending the *Fuel Tax Act 2006* to ensure that the road user charge rate that is determined is rounded in the same way as fuel duty rates are rounded. The road user charge is a cost recovery mechanism that recovers part of the road construction and maintenance costs attributed to heavy vehicles. The *Fuel Tax Act 2006* establishes a mechanism for the collection of the road user charge by reducing the fuel tax credits on fuel used by eligible heavy vehicle operators.

Human rights implications

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

Conclusion

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

Chapter 2

Regulation impact statement: CPI indexation of fuel excise and excise-equivalent customs duty

What is fuel excise?

2.1 Fuel tax (excise or customs duty) is applied to all excisable fuel and petroleum products whether domestically produced or imported.

2.2 The rate applicable to each fuel varies, but the benchmark rate that applies to petroleum and diesel is currently set at 38.143 cents per litre. The tax is applied at the point at which the fuel enters the Australian market. For domestically produced fuels, this is generally at the point of wholesale, while for imported fuels, it is at the point of delivery for home consumption.

2.3 Indexation of fuel tax was introduced in August 1983 in order to maintain the real value of tax collections and to provide more stability for businesses and consumers by removing the need for discretionary changes to tax rates (larger amounts made less frequently). In March 2001, the then Government abolished the six monthly indexation of fuel tax rates, but continued to apply indexation to other excisable goods, such as alcohol and tobacco. This decision was taken following the introduction of the GST on 1 July 2000, as increasing world oil prices at the time gave rise to concerns that fuel prices would be pushed higher. Consequently, the fuel tax on petrol and diesel has remained at 38.143 cents per litre since then.

2.4 The *Australia's Future Tax System* report released in May 2010 recommended that revenue from fuel tax imposed for general government purposes should be replaced over time with revenue from more efficient broad-based taxes.

2.5 The report also recommended that fuel tax should apply to all fuels used in road transport on the basis of energy content, and be indexed to the consumer price index (CPI).

Why is government action needed?

2.6 Since the cessation of fuel tax indexation in March 2001 the real value of fuel tax has declined with inflation, creating significant difficulties for the Government to fund spending commitments, such as new road infrastructure projects. At the time of the indexation freeze, fuel tax represented 43.4 per cent of the average national petrol price. By March 2014 this proportion had fallen to 25 per cent.

2.7 In the 2014-15 Budget the Government committed to increasing road expenditure, with around \$26 billion of Commonwealth spending planned for road infrastructure projects. An increase in the rate of fuel tax would be used to help fund these infrastructure projects. This would create a link between the users of the road infrastructure and the payers of fuel tax whilst ensuring a predictable and growing source of revenue.

2.8 Unlike fuel, rates on alcohol and tobacco are currently indexed. Alcohol (excluding wine) is indexed to the CPI, which changes biannually in February and August every year. As of March 2014, tobacco has changed from CPI indexation to Average Weekly Ordinary Time Earnings (AWOTE) indexation and is now indexed in March and September every year.

What policy options are you considering?

OPTION 1: Biannual CPI indexation

2.9 Beginning 1 August 2014 the excise and excise-equivalent customs duty on all non-aviation fuels are indexed to the CPI, occurring on 1 February and 1 August each year thereafter based on the sum of the CPI movements in the two quarters prior to the indexation date.

2.10 The duty on gaseous fuels will increase on 1 July 2014 in accordance with their transition into the fuel tax system, and will then have biannual CPI indexation applied to them from 1 August 2014. On 1 July 2015 the duty rate will then rise by an interval such that it maintains a 50 per cent discount on the energy-content equivalent rate with the application of indexation.

2.11 For consumers of petrol and diesel, the reintroduction of indexation is expected to result in an initial price increase of around 0.5 cents per litre on 1 August 2014.

2.12 By the end of the forward estimates period in July 2018 the biannual indexation of fuel excise and excise-equivalent customs duty is estimated to result in a total increase in petrol and diesel prices of 4.1 cents per litre, which includes a 0.4 cent per litre increase in GST which is levied on the duty-inclusive price.

OPTION 2: Quarterly CPI indexation

2.13 Beginning 1 August 2014 the excise and excise-equivalent customs duty on all non-aviation fuels are indexed to the CPI, occurring on 1 February, 1 May, 1 August and 1 November each year thereafter based on the CPI movement in the quarter prior to the indexation date.

2.14 The duty on gaseous fuels will increase on 1 July 2014 in accordance with their transition into the fuel tax system, and will then have quarterly CPI indexation applied to them from 1 August 2014. On 1 July 2015 the duty rate will then rise by an interval such that it maintains a 50 per cent discount on the energy-content equivalent rate with the application of indexation.

2.15 For consumers of petrol and diesel, the reintroduction of indexation is expected to result in a price increase of around 0.5 cents per litre after two indexation periods.

2.16 By the end of the forward estimates period in July 2018, the quarterly indexation of fuel excise and excise-equivalents customs duty will result in a larger increase in petrol and diesel prices than the biannual indexation due to compounding effects.

OPTION 3: A one-off increase of four cents

2.17 On 1 August 2014 the excise and excise-equivalent customs duty rates on petrol and diesel are increased by 4 cents per litre, with all other non-aviation fuels having pro-rated increases. This would increase the duty rate on petrol and diesel from 38.143 cents per litre to 42.143 cents per litre.

2.18 Gaseous fuels would continue to increase at the same intervals as previously until they reach their full rate on 1 July 2015 and then have an additional 10.5 per cent increase on 1 July 2016, bringing the duty rate on gaseous fuels back in line with 50 per cent of the energy equivalent rate.

What is the likely impact of each option?

Fuel wholesalers and importers

2.19 The Australian Competition and Consumer Commission (ACCC) currently publishes an annual price monitoring report on the Australian petroleum industry. The most recent was published in December 2013.²³

2.20 In that report, the ACCC stated that the wholesale market for petroleum is dominated by four major players (BP, Shell, Caltex and Mobil). These four entities accounted for 92 per cent of wholesale petrol sale volumes in 2012-13.

2.21 According to further data provided by the Australian Taxation Office (ATO), there are fewer than 100 remitters of fuel excise (excluding aviation fuel remitters).

2.22 For the options which change the current treatment of fuel tax (all options), the initial compliance cost imposed on wholesale remitters is likely to be felt through the need for an update to their systems to enable changes to the rate they apply when on-selling the fuel.

2.23 As a result, the compliance cost assessment uses the average wage in the IT industry of \$47 per hour and assumes an average of five hours to update each of the 97 fuel companies. This creates a total compliance cost for the industry of approximately \$22,795 for all of the considered options (a Regulatory Burden and Cost Offset Estimate Table for option 1 is provided at [Appendix A](#)).

2.24 However, some of the oil companies may not need the initial update to their systems as they will already have the ability to account for changing duty rates.

2.25 There will also be ongoing compliance costs for the options, as a legislative change to the fuel excise and excise-equivalent customs duty will result in either biannual (Option 1), quarterly (Option 2) or once-off (Option 3) changes to the duty rate that the wholesalers charge purchasers of fuel. Each change with indexation will require the manual inputting of a new duty rate into the company's systems, with reference to the new duty rate announced by the ATO.

23 Australian Competition and Consumer Commission (2013) *Monitoring of the Australian petroleum industry 2013 - Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia*; <http://www.accc.gov.au/publications/monitoring-of-the-australian-petroleum-industry>.

2.26 The compliance costs for this action are assumed to be completed by administrative staff paid an average of \$27 per hour, taking half an hour to find and change the excise and customs duty rates in the company's system and done either biannually, quarterly or once only, depending upon which option is chosen. This creates a total compliance cost for the industry of \$2,619 for biannual indexation, \$5,238 for quarterly indexation or \$1,309 for the one-off increase (which would be the same as for an annual indexation option).

2.27 The indexed rates of fuel tax will be calculated by the ATO every indexation period, which will save businesses the need to calculate the new rate themselves by applying CPI to the present duty rate.

2.28 The size of these compliance costs is likely to vary from wholesaler to wholesaler, with smaller remitters of duty likely to face greater compliance cost relative to the four large oil companies.

Households and businesses

2.29 By re-introducing biannual indexation by the consumer price index of excise and excise-equivalent customs duty (Option 1) for all fuels except aviation fuels, the Government would generate \$2.2 billion over the forward estimates period.

2.30 The price impact of any increase in fuel excise and excise-equivalent customs duty will fall most heavily on households and owners of light commercial vehicles used on-road. However, there will be no increase in the compliance costs borne by these groups.

2.31 Similarly, the effect on demand of an increase in the fuel tax is expected to be minimal, due to the inelasticity of demand for most fuel products. The *Australia's Future Tax System* consultation paper noted that 'due to limitations in current technology and distribution systems, the demand for transport fuels is relatively unresponsive to price.'²⁴

2.32 Fuel used in heavy (that is, more than 4.5 tonnes gross vehicle mass) on-road vehicles and business off-road use will not bear the burden of any fuel excise increases because of their entitlements to fuel tax credits. For off-road activities, this is the full reimbursement of fuel tax while for heavy on-road vehicles this is equivalent to the fuel tax rate minus the road user charge.

24 Australia's Future Tax System (2008) *Consultation Paper*;
http://taxreview.treasury.gov.au/content/downloads/consultation_paper/consultation_paper.pdf.

2.33 However, businesses with access to fuel tax credits may still face increased compliance costs. Fuel purchase records will need to be categorised before and after the indexation date and variable fuel tax credit entitlements will need to be calculated for standard reporting businesses with either quarterly or annual Business Activity Statements (BAS). This will occur under any of the considered options to change the duty rates (all options), but will be an ongoing cost every six- or three-month period under the indexation options (Options 1 and 2).

2.34 The indexation of fuel excise will also further affect those businesses which rely on their own software to calculate their fuel tax credit claims, as they will have to manually enter the new excise rate every indexation period.

2.35 The ongoing compliance costs for these actions depend on which option is chosen and may occur once-off, biannually or quarterly. Assuming that all (approximately 186,000) fuel tax credit claimants are similarly affected by either filing a Business Activity Statement quarterly or annually or through having to update their own software every month, the compliance costs are estimated at \$27 per hour for a single administrative staff member to either sort through the fuel purchase records or change the excise rate in the software within half an hour. This creates a total compliance cost for the industry of \$5,037,903 for biannual indexation, \$10,075,806 for quarterly indexation or \$2,518,952 for the once-off increase.

2.36 Businesses with an entitlement to offsetting fuel tax credits may also face the possibility of increased cash flow issues due to a larger immediate outgoing of fuel tax, as they only receive the credit for fuel tax paid at the end of their tax period when they lodge their BAS.

2.37 As a result of the more frequent indexation periods and the fixed time costs of any rate changes, quarterly indexation (Option 2) would likely involve higher compliance costs than biannual indexation (Option 1).

Alternative fuels

2.38 The gaseous fuels are not yet through their transition into the fuel tax system, which is set to be completed on 1 July 2015. Reintroducing fuel tax indexation will further raise the scheduled increases in their fuel tax.

2.39 The Government announced in the 2014-15 Budget that it will make changes to the tax treatment of ethanol and biodiesel to end their respective industry support grants, the Ethanol Production Grants and the Cleaner Fuels Grants Scheme. This is planned to begin on 1 July 2015

with the immediate cessation of the grants and a simultaneous reduction of the excise rate on domestically produced ethanol and biodiesel from its current rate of 38.143 cents per litre to zero. The customs duty rate on imported ethanol and biodiesel will remain at 38.143 cents per litre. Over the following five years to 2020-21, both products will be phased into the excise system until they reach 50 per cent of the energy content equivalent excise rate, similar to the expected treatment of gaseous fuels after 1 July 2015.

2.40 At current excise rates, 50 per cent of energy content equivalence would be 12.5 cents per litre for ethanol (increasing in 2.5 cent intervals over the five years) and 19.07 for biodiesel (in 3.814 cent intervals). However, during the transition period, ethanol and biodiesel will be subject to indexation along with other non-aviation fuels, which will further raise the scheduled increases in their excise.

Consultation

2.41 A targeted consultation process on the compliance costs associated with a change to biannual fuel duty indexation was undertaken. The four major fuel manufacturers in the Australian market (BP, Shell, Caltex and Mobil) have been consulted on the estimated costs associated with the reintroduction of fuel duty indexation

2.42 While the fuel manufacturers are not overly concerned about the costs of updating their systems, they do have concerns about the time between the announcement of the new duty rate each indexation period and its application on 1 August or 1 February as they consider this could lead to disputes over payments from customers.

2.43 These timing concerns are largely driven by the relevant CPI figures only being released in late July and late January for the August and February indexation periods, respectively. This gives the fuel manufacturers approximately one week to be forewarned of the new duty rate by the ATO and Customs. One weeks' notice for the new rate was standard practice in the years between 1983 and 2001, prior to the freezing of indexation for fuel products, and has continued to be standard practise for alcohol and tobacco duty (prior to tobacco moving to AWOTE indexation in March 2014).

2.44 Concerns were also raised about the impact of indexation on tying up working capital, as there is normally a delay between when the manufacturers remit excise and customs duty and when they receive payment from their customers.

2.45 Further, the fuel manufacturers also raised concerns about the costs involved with informing customers of changed prices. However, given the constant price volatility in fuel markets, the additional costs from fuel indexation involved with this are considered to be negligible in the context of the overall compliance costs of \$5.1 million.

Conclusion and recommended option

2.46 In view of the Government's commitment to deliver new road infrastructure projects through a predictable, growing source of revenue, it is considered that the reintroduction of some form of indexation of fuel tax (Options 1 or 2) is the preferred option.

2.47 Given that biannual indexation was a standard feature of the fuel tax system prior to 2001 and due to the additional compliance costs expected from quarterly indexation (Option 2), the biannual indexation of fuel excise to the CPI from 1 August 2014 (Option 1), is the preferred option. In addition, in comparison to annual indexation, biannual indexation would also result in a larger source of revenue which would allow the Government to more easily fund spending on new road infrastructure projects.

2.48 To further simplify the compliance burden on businesses, rounding the duty rate of indexed fuels from three decimal places in a cent to one decimal place would also be recommended. On the current rate for petrol, this would have the effect of reducing the excise and excise-equivalent customs duty rate from 38.143 cents per litre to 38.1 cents per litre.

Implementation and review

2.49 The proposed approach is to biannually index non-aviation fuel excise and excise-equivalent customs duty to the CPI from 1 August 2014 by the introduction of legislation into the Parliament.

2.50 The legislation would modify the *Excise Tariff Act 1921* and the *Customs Tariff Act 1995*. These modifications will result in the reintroduction of the indexation to the CPI of excise and excise-equivalent customs duty on fuel products. In addition, the applicable duties will now be applied by rounding to one decimal place for the purpose of remitting excise and the claiming of fuel tax credits.

2.51 To ensure that the fuel tax credit system works effectively, modifications will also be made to the *Fuel Tax Act 2006*. These modifications seek to ensure that the same indexed rate is used for determining the amount of excise or excise-equivalent customs duty payable on the fuel and the amount of the fuel tax credit for the same fuel.

2.52 Further changes to the *Fuel Tax Act 2006* will also ensure that the road user charge is designated to three decimal places after the next determination by the Transport Minister as well as during the transition period prior to this determination, in order to prevent additional compliance burdens through an early determination.

2.53 A separate Fuel Indexation (Road Funding) Special Account Bill 2014 will establish a special account in order to ensure that all net additional revenue gained from the indexation of fuel duty is used to fund the provision of new road infrastructure projects.

2.54 Consequential amendments will also be made to the *Energy Grants (Cleaner Fuels) Scheme Regulations 2004* to ensure that the Cleaner Fuels Grants Scheme continues to fully offset the increased fuel duty applying to biofuels. Further amendments will be made to the *Excise Act 1901* and the *Financial Management and Accountability Act 1997* to ensure the proper functioning of the fuel duty indexation measure.

Appendix A: Regulatory Burden and Cost Offset Estimate Table

Regulatory Burden and Cost Offset Estimate Table

Average Annual Compliance Costs (from business as usual)				
Costs	Business	Community Organisations	Individuals	Total change in cost
Total, by sector	\$5,063,317.00	\$0	\$0	\$5,063,317.00
Cost offset				
Cost offset	Business	Community Organisations	Individuals	Total, by source
Agency	\$5,063,317.00	\$0	\$0	\$5,063,317.00
Within portfolio	\$0	\$0	\$0	\$0
Outside portfolio	\$0	\$0	\$0	\$0
Total by Sector	\$5,063,317.00	\$0	\$0	\$5,063,317.00
Proposal is cost neutral? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
Proposal is deregulatory? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Balance of cost offsets (\$132,988,606.10)				

A regulatory offset has been identified from within the Treasury portfolio. This offset relates to the Future of Financial Advice (FOFA) reforms.

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Excise Tariff Amendment (Fuel Indexation) Bill 2015

Schedule 1: Incorporation of Tariff Proposals

<i>Bill reference</i>	<i>Paragraph number</i>
Clause 2	1.83, 1.86, 1.87, 1.88
Items 1 to 9 and 13 to 18, subsection 6G(1) and subitems 10.1, 10.2, 10.3, 10.5, 10.10, 10.15, 10.16, 10.18, 10.20, 10.21, 10.25, 10.26, 10.27, 10.28 of the Schedule to the <i>Excise Tariff Act 1921</i>	1.34
Items 10 to 12, subitems 10.19A, 10.19B and 10.19C of the Schedule to the <i>Excise Tariff Act 1921</i>	1.38
Item 19	1.86
Items 20 to 25, subsections 6A(1), (2), (5), (6), (8) and (9) of the <i>Excise Tariff Act 1921</i>	1.23
Item 26, subsection 6A(10) of the <i>Excise Tariff Act 1921</i>	1.26
Items 26 and 29, subsection 6A(10) and method statement at the end of step 3 of subsection 6G(1) of the <i>Excise Tariff Act 1921</i>	1.32
Item 27, subsections 6AAA(1), (3) and (4) of the <i>Excise Tariff Act 1921</i>	1.44
Item 27, subsections 6AAA(2), (3) and (4) of the <i>Excise Tariff Act 1921</i>	1.45
Item 28, method statement step 1 in subsection 6G(1) of the <i>Excise Tariff Act 1921</i>	1.31
Item 30	1.84, 1.87
Item 31, section 6FAA of the <i>Excise Tariff Act 1921</i>	1.43
Item 32	1.88

Schedule 2: Consequential amendments for ethanol and biodiesel

<i>Bill reference</i>	<i>Paragraph number</i>
Items 1 and 2, subsection 6A(10) and subparagraph 6AAA(3)(a)(ii) of the <i>Excise Tariff Act 1921</i>	1.80
Items 3 and 4, notes at the end of subsections 6H(1) and 6J(1) of the <i>Excise Tariff Act 1921</i>	1.81

Customs Tariff Amendment (Fuel Indexation) Bill 2015

Schedule 1: Incorporation of Tariff Proposals

<i>Bill reference</i>	<i>Paragraph number</i>
Clause 2	1.86, 1.87, 1.88
Item 1, section 19AAC of <i>Customs Tariff Act 1995</i>	1.28
Item 1, paragraph 19AAB(1)(a) of the <i>Customs Tariff Act 1995</i>	1.34
Item 1, paragraphs 19AAB(1)(b), (c) and (d) of the <i>Customs Tariff Act 1995</i>	1.38
Item 2	1.83, 1.86
Items 3 to 9, subsections 19(1), (2), (5), (6), (8), (9) and (10) of the <i>Customs Tariff Act 1995</i>	1.23
Item 9, subsection 19(10) of the <i>Customs Tariff Act 1995</i>	1.26
Item 10, section 19AAA of the <i>Customs Tariff Act 1995</i>	1.44
Item 10, subsection 19AAA(2) of the <i>Customs Tariff Act 1995</i>	1.45
Item 12	1.84, 1.87
Item 13, section 19AD of the <i>Customs Tariff Act 1995</i>	1.43
Item 14	1.88

Schedule 2: Other amendments

<i>Bill reference</i>	<i>Paragraph number</i>
Clause 2	1.85
Item 2	1.85

Fuel Indexation (Road Funding) Special Account Bill 2015

Part 1: Preliminary

<i>Bill reference</i>	<i>Paragraph number</i>
Section 3	1.50
Section 4	1.67, 1.72
Sections 5 and 6	1.49

Part 2: Fuel Indexation (Road Funding) special account

<i>Bill reference</i>	<i>Paragraph number</i>
Section 7	1.46
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Subsection 8(3)	1.57, 1.58
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Subsection 10(4)	1.65
Subsection 10(5)	1.66
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Part 3: Miscellaneous

<i>Bill reference</i>	<i>Paragraph number</i>
Section 13	1.69
Section 14	1.70
Section 15	1.74

Fuel Indexation (Road Funding) Bill 2015**Schedule 1: Consequential amendments for establishment of Fuel Indexation (Road Funding) special account**

<i>Bill reference</i>	<i>Paragraph number</i>
Item 1, subsection 5(2) of the <i>COAG Reform Fund Act 2008</i>	1.75
Item 2, subsection 8(3) of the <i>Fuel Indexation (Road Funding) Special Account Act 2015</i>	1.76
Item 3, subparagraph 9(2)(b)(i)	1.81
Item 4	1.82

Excise Tariff Amendment (Fuel Indexation) Bill 2015, Customs Tariff Amendment (Fuel Indexation) Bill 2015, Fuel Indexation (Road Funding) Special Account Bill 2015, Fuel Indexation (Road Funding) Bill 2015

Schedule 2: Consequential amendments for indexation

<i>Bill reference</i>	<i>Paragraph number</i>
Item 1, paragraph 77H(2)(2AA) of the <i>Excise Act 1901</i>	1.77

Schedule 3: Fuel tax

<i>Bill reference</i>	<i>Paragraph number</i>
Item 1 subsection 43-10(11A) of the <i>Fuel Tax Act 2006</i>	1.78
Item 2	1.95