Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006

No. 74, 2006

An Act to amend the law relating to excise, and for other purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

Contents

1 Short title 1
2 Commencement 2
3 Schedule(s) 2

Schedule 1—Amendments 3

Part 1—Amendments 3

Administrative Decisions (Judicial Review) Act 1977 3
Aviation Fuel Revenues (Special Appropriation) Act 1988 3
Energy Grants (Cleaner Fuels) Scheme Act 2004 3
Excise Act 1901 5
Fuel Tax Act 2006 25
Petroleum Excise (Prices) Act 1987 25
Sea Installations Act 1987 25
Taxation Administration Act 1953 25

Part 2—Application, saving and transitional provisions 27

Schedule 2—Repeal of Acts 30

Coal Excise Act 1949 30
Distillation Act 1901 30
Fuel Blending (Penalty Surcharge) Act 1997 30
Fuel Misuse (Penalty Surcharge) Act 1997 30
Fuel (Penalty Surcharges) Administration Act 1997 30
Fuel Sale (Penalty Surcharge) Act 1997 30
Spirits Act 1906 30

Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006

No. 74, 2006

An Act to amend the law relating to excise, and for other purposes

[*Assented to 26 June 2006*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	26 June 2006
2. Schedule 1, items 1 to 91	1 July 2006.	1 July 2006
3. Schedule 1, items 92 to 94	Immediately after the commencement of the *Fuel Tax Act 2006*.	1 July 2006
4. Schedule 1, items 95 to 109	1 July 2006.	1 July 2006
5. Schedule 2	1 July 2006.	1 July 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Administrative Decisions (Judicial Review) Act 1977

1 Paragraph (e) of Schedule 1

Omit "*Coal Excise Act 1949*".

Aviation Fuel Revenues (Special Appropriation) Act 1988

2 Section 3 (definition of *aviation gasoline*)

Omit "item 11 of the Schedule to the *Excise Tariff Act 1921* as gasoline for use as a fuel in aircraft", substitute "subitem 10.6 of the Schedule to the *Excise Tariff Act 1921* (about gasoline for use as fuel in aircraft)".

3 Section 3 (definition of *aviation kerosene*)

Omit "item 11 of the Schedule to the *Excise Tariff Act 1921* as kerosene for use as a fuel in aircraft", substitute "subitem 10.17 of the Schedule to the *Excise Tariff Act 1921* (about kerosene for use as fuel in aircraft)".

Energy Grants (Cleaner Fuels) Scheme Act 2004

4 After paragraph 2A(a)

Insert:

(aa) grants to fully offset any excise duty or customs duty payable in relation to the manufacture or importation of renewable diesel for which a provisional entitlement arises during the period starting on 1 July 2006 and ending on 30 June 2011;

5 Paragraph 2A(b)

Omit "LPG or methanol", substitute "LPG, methanol or renewable diesel".

6 Subsection 4(1) (definition of *biodiesel*)

Repeal the definition, substitute:

biodiesel means fuel that:

(a) is manufactured by chemically altering vegetable oils or animal fats (including recycled oils from these sources) to form mono-alkyl esters; and

(b) complies with the applicable fuel standard for such fuel.

7 Subsection 4(1) (paragraph (a) of the definition of *cleaner fuel*)

Omit "LPG or methanol", substitute "LPG, methanol or renewable diesel".

8 Subsection 4(1) (paragraph (a) of the definition of *end day*)

Omit "LPG or methanol", substitute "LPG, methanol or renewable diesel".

9 Subsection 4(1) (definition of *manufacture*)

Omit "petroleum blending as described in section 77H", substitute "fuel blending as described in section 77G".

10 Subsection 4(1)

Insert:

renewable diesel has the meaning given by section 4A.

11 Subsection 4(1) (after paragraph (a) of the definition of *start day*)

Insert:

(aaa) for renewable diesel—1 July 2006; or

12 At the end of Part 1

Add:

4A Definition of *renewable diesel*

(1) For the purposes of this Act, ***renewable diesel*** means liquid fuel that:

(a) is manufactured by chemically altering vegetable oils or animal fats (including recycled oils from these sources) through a process of hydrogenation (whether or not that process was part of some other process); and

(b) complies with the applicable fuel standard for diesel.

(2) If:

(a) a quantity of liquid fuel (the ***final fuel***) is manufactured; and

(b) a part of the final fuel was manufactured by chemically altering vegetable oils or animal fats (including recycled oils from these sources) through a process of hydrogenation; and

(c) a part of the final fuel is diesel; and

(d) the final fuel satisfies the applicable fuel standard for diesel;

then the amount of the final fuel worked out in accordance with the regulations is taken to be ***renewable diesel*** for the purposes of this Act.

13 Subsection 8(1)

Omit "LPG or methanol" (first occurring), substitute "LPG, methanol or renewable diesel".

14 Subsection 8(1) (after table item 1)

Insert:

1A	Renewable diesel	The period: (a) starting at the start of renewable diesel's start day; and (b) ending at the end of 30 June 2011.	100% of biodiesel's excise duty rate.

15 Subsection 8(1) (table items 2 to 5)

Omit "LPG or methanol", substitute "LPG, methanol or renewable diesel".

Excise Act 1901

16 Subsection 4(1) (definition of *clean fuel*)

Repeal the definition.

17 Subsection 4(1) (definition of *designated fuel*)

Repeal the definition.

18 Subsection 4(1) (definition of *Excise Acts*)

Omit "(including the *Distillation Act 1901*)".

19 Subsection 4(1) (definition of *fuel*)

Omit "item 11, 12 or 17", substitute "item 10, 20 or 21".

20 Subsection 4(1) (definition of *marker*)

Repeal the definition.

21 Subsection 4(1) (definition of *other excisable beverage*)

Repeal the definition.

22 Subsection 4(1) (definition of *Spirit*)

Omit "item 2 (other than subitem 2(H))", substitute "item 3".

23 Section 24

Repeal the section, substitute:

24 Excisable goods and goods liable to duties of Customs may be used in manufacturing excisable goods

(1) Excisable goods may, while subject to the CEO's control, be used in the manufacture of other excisable goods in accordance with this Act.

(2) Goods liable to duties of Customs may, while subject to control of the Customs, be used in the manufacture of excisable goods in accordance with this Act.

(3) The regulations may prescribe conditions on the use of:

(a) excisable goods, while subject to the CEO's control, in the manufacture of other excisable goods; or

(b) goods liable to duties of Customs, while subject to the control of the Customs, in the manufacture of excisable goods.

24 Section 32

Repeal the section.

25 Section 37

Repeal the section.

26 Paragraph 39A(2)(d)

Omit “an employee of the applicant”, substitute “a natural person”.

27 After paragraph 39A(2)(f)

Insert:

(fa) if the applicant is a natural person—he or she does not have, and he or she does not have available to him or her, the skills and experience to carry out the activity that would be authorised by the licence; or

(fb) if the applicant is a company—the company does not have available to it the skills and experience to carry out the activity that would be authorised by the licence; or

28 After paragraph 39A(2)(i)

Insert:

(ia) the applicant would not have a market for goods of a kind the licence would relate to; or

29 Paragraphs 39B(a) and (b)

Omit “making the application”, substitute “the application was made”.

30 After paragraph 39B(b)

Insert:

(ba) the extent of the person’s compliance, within 4 years before the application was made, with any law administered by the CEO; and

31 After paragraph 39B(c)

Insert:

(ca) the person’s financial resources; and

32 Paragraph 39B(e)

Before “any”, insert “if the person is the applicant—”.

33 Paragraph 39B(f)

Omit “where”, substitute “if the person is the applicant and”.

34 Paragraphs 39C(a) and (b)

Omit “making the application”, substitute “the application was made”.

35 After paragraph 39C(b)

Insert:

(ba) the extent of the company’s compliance, within 4 years before the application was made, with any law administered by the CEO; and

36 After paragraph 39C(c)

Insert:

(ca) the company’s financial resources; and

37 Section 39E

Repeal the section, substitute:

39E Duration of licences

(1) A licence comes into force on the day it is granted.

(2) It remains in force, unless cancelled earlier, until the end of the next 30 September after the second anniversary of the day on which it is granted.

Example 1: A licence is granted on 15 October 2007. It ends on 30 September 2010.

Example 2: A licence is granted on 15 September 2007. It ends on 30 September 2009.

38 Subsection 39F(1)

Omit “manufacturer”.

Note: The heading to section 39F is altered by omitting “**manufacturer**”.

39 Subsection 39F(2)

Omit “manufacturer”.

40 At the end of section 39F

Add:

Automatic extension of licence

(4) If the Collector has not decided an application for renewal of a licence before the end of the expiry day, the licence continues in force until the Collector decides the application.

Period of renewal

(5) If the Collector renews a licence, it is renewed for a period of 3 years, unless cancelled earlier, starting on the day after the expiry day.

Example: A licence is due to expire on 30 September 2008 (the expiry day). On 1 September 2008 the licence holder applies to renew the licence. The Collector has not decided the application by the end of 30 September 2008.

The licence continues in force automatically past 30 September 2008 until the Collector decides the application.

On 15 October 2008 the Collector decides to renew the licence. The 3 year period of renewal starts on 1 October 2008.

Licence may be renewed more than once

(6) A licence may be renewed more than once under this section.

Definition

(7) In this section:

expiry day, in relation to a licence, means the 30 September on which the licence is due to expire.

41 Paragraph 39G(1)(d)

Omit “an employee of the licence holder”, substitute “a natural person”.

42 After paragraph 39G(1)(f)

Insert:

(fa) if the licence holder is a natural person—he or she does not have, and he or she does not have available to him or her, the skills and experience to carry out the activity that is authorised by the licence; or

(fb) if the licence holder is a company—the company does not have available to it the skills and experience to carry out the activity that is authorised by the licence; or

43 After paragraph 39G(1)(i)

Insert:

(ia) the licence holder does not have a market for goods of a kind the licence relates to; or

44 After paragraph 39H(b)

Insert:

(ba) the extent of the person's compliance, within 4 years before the day of the Collector's consideration, with any law administered by the CEO; and

(bb) the person's financial resources; and

45 After paragraph 39I(b)

Insert:

(ba) the extent of the company's compliance, within 4 years before the day of the Collector's consideration, with any law administered by the CEO; and

(bb) the company's financial resources; and

46 Paragraph 39K(6)(d)

Omit ", in a manner prescribed by the regulations,".

47 Section 47

Repeal the section.

48 Section 48

Repeal the section.

49 Subsection 50(1)

After "manufacturer", insert ", licensed producer and licensed dealer".

Note: The heading to section 50 is replaced by the heading "**Record keeping**".

50 At the end of subsection 54(1)

Add:

Note: For provisions about collection and recovery of the duty, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

51 At the end of section 54

Add:

(3) If excisable goods are delivered to a relevant traveller (within the meaning of section 61E) under a permission under that section, then, despite subsection (1) of this section, the relevant traveller (and no-one else) is liable to pay excise duty on the goods.

52 Section 57

Repeal the section.

53 At the end of section 58

Add:

(6) In subsections (4) and (5):

other excisable beverage means goods covered by item 2 of the Schedule to the *Excise Tariff Act 1921*.

54 Section 59

Omit "section 59A", substitute "sections 59A and 59AA".

55 After section 59A

Insert:

59AA Payment of duty by relevant travellers

(1) Excise duty on goods payable by a relevant traveller under subsection 54(3) must be paid at the rate in force at the time the goods are taken by the relevant traveller for reporting to an officer of Customs doing duty in relation to clearance through Customs of the personal baggage of the relevant traveller.

(2) The excise duty is due and payable at that time.

Note: For provisions about collection and recovery of the duty, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

(3) In this section:

officer of Customs has the same meaning as in section 61E.

relevant traveller has the same meaning as in section 61E.

56 Paragraph 59B(1)(b)

Omit “, under regulations made by virtue of section 59D,”.

57 At the end of subsections 60(1), (1A), (1B) and (1C)

Add:

Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

58 Subsections 60(2) and (3)

Repeal the subsections.

59 After subsection 61A(2)

Insert:

(2AA) A Collector must not give permission under subsection (1) or (2) in circumstances prescribed by the regulations.

60 At the end of Part VI

Add:

65 Rules for working out the volume or weight etc. of excisable goods

Making of rules

(1) The CEO may, by legislative instrument, determine rules for working out one or more of the following:
  (a) the volume of excisable goods;
  (b) the weight of excisable goods;
  (c) the percentage by volume of alcohol in excisable goods.

Note: The rules may make different provision with respect to different matters or different classes of matters (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

(2) The rules may, for example:
  (a) specify sampling methods; and
  (b) permit minor variations between:
    (i) the nominated or labelled volume of excisable goods and the actual volume of the goods; or
    (ii) the nominated or labelled weight of excisable goods and the actual weight of the goods; or

(iii) the nominated or labelled volume of alcohol in excisable goods and the actual volume of alcohol in the goods;

so as to provide for unavoidable variations directly attributable to the manufacturing process.

Application of rules

(3) The rules apply to excisable goods entered for home consumption on or after the time when the rules take effect.

Note: Section 12 of the *Legislative Instruments Act 2003* deals with when a legislative instrument takes effect.

61 Section 67

Repeal the section.

62 Section 69

Repeal the section.

63 Section 70

Repeal the section.

64 Section 75

Omit "as prescribed".

65 At the end of Part VII

Add:

77AA Tobacco leaf stock may be checked

(1) If a person has or had possession, custody or control of tobacco leaf, a Collector may request, in writing, the person to account for the tobacco leaf.

Payment of duty equivalent

(2) If the person does not account for the tobacco leaf to the satisfaction of the Collector, the person must, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the duty that would have been payable on the deficient tobacco leaf if:

(a) it had been manufactured into excisable goods classified to subitem 5.5 of the Schedule to the *Excise Tariff Act 1921*; and

(b) it had been entered for home consumption on the day on which the Collector made the demand.

Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

(3) In subsection (2):

deficient tobacco leaf means the weight, in kilograms, of the tobacco leaf that has not been accounted for to the satisfaction of the Collector who made the request.

No effect on other liabilities

(4) This section does not affect the liability of a person arising under or because of:

(a) any other provision of this Act; or

(b) a security given under this Act.

Request or demand not a legislative instrument

(5) The following are not legislative instruments:

(a) a request under subsection (1);

(b) a demand under subsection (2).

66 Section 77A (definition of *alcoholic beverage*)

Repeal the definition, substitute:

alcoholic beverage means goods classified to item 1 or 2, or subitem 3.1, 3.2 or 3.10, of the Schedule to the *Excise Tariff Act 1921*.

67 Section 77A (definition of *bulk container*)

Repeal the definition.

68 Section 77A (definition of *container*)

Repeal the definition.

69 Section 77B

Repeal the section.

70 Section 77C

Repeal the section.

71 Section 77FB

Repeal the section.

72 At the end of Part VIIA

Add:

77FC Repackaged beer

If:

(a) beer classified to subitem 1.2, 1.6 or 1.11 of the Schedule to the *Excise Tariff Act 1921* is delivered for home consumption (beer packaged in an individual container exceeding 48 litres); and

(b) the beer is repackaged into sealed individual containers not exceeding 48 litres;

then, for the purposes of this Act, that repackaging is taken to be the manufacture of beer.

Note: Subitems 1.1, 1.5 and 1.10 of that Schedule set out the rates of duty for beer packaged in individual containers not exceeding 48 litres.

73 After Part VIIA

Insert:

Part VIIAA—Special provisions relating to spirits

77FD Spirit for fortifying Australian wine or Australian grape must

Grant of approval

(1) For the purposes of subitem 3.5 of the Schedule to the *Excise Tariff Act 1921*, the CEO may grant a person a written approval to use spirit for fortifying Australian wine or Australian grape must.

(2) The approval must be for:

(a) the use of a one-off specified quantity of spirit; or
(b) the use of a specified quantity of spirit in a calendar month or a calendar year.

Note: See also section 77FH (about payment of duty equivalent if the spirit is not used for the approved purpose).

Conditions

(3) The CEO must specify in an approval any conditions to which the approval is subject.

Approval not a legislative instrument

(4) An approval under subsection (1) is not a legislative instrument.

77FE Spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose—class determinations

(1) The CEO may, by legislative instrument, determine a class of persons for the purposes of subitem 3.6 of the Schedule to the *Excise Tariff Act 1921*.

(2) For the purposes of that subitem, the determination may also specify a quantity of spirit that a person included in the class may use in a calendar month or a calendar year.

Note: See also section 77FH (about payment of duty equivalent if spirit is delivered to a person included in such a class and the person does not use the spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose).

77FF Spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose—specific approvals

Grant of approval

(1) For the purposes of subitem 3.7 of the Schedule to the *Excise Tariff Act 1921*, the CEO may grant a person a written approval to use spirit for a specified industrial, manufacturing, scientific, medical, veterinary or educational purpose.

(2) The approval must be for:
(a) the use of a one-off specified quantity of spirit; or

(b) the use of a specified quantity of spirit in a calendar month or a calendar year.

Note: See also section 77FH (about payment of duty equivalent if the spirit is not used for the approved purpose).

Conditions

(3) The CEO must specify in an approval any conditions to which the approval is subject.

Approval not a legislative instrument

(4) An approval under subsection (1) is not a legislative instrument.

Guidelines

(5) The CEO must, by legislative instrument, develop guidelines that he or she must have regard to when deciding whether or not to grant an approval under subsection (1).

77FG Denatured spirits

(1) For the purposes of subitem 3.8 of the Schedule to the *Excise Tariff Act 1921*, the CEO may, by legislative instrument, determine a formula for the denaturing of spirits.

(2) The CEO must give the greatest weight to the protection of the revenue in determining a formula under subsection (1).

77FH When an amount is payable on spirit covered by section 77FD, 77FE or 77FF

(1) If spirit classified to subitem 3.5 or 3.7 of the Schedule to the *Excise Tariff Act 1921* is delivered for home consumption, a Collector may request, in writing, the person holding the approval concerned to account to the satisfaction of the Collector that the spirit has been used for the purpose specified in the approval.

(2) If spirit classified to subitem 3.6 of the Schedule to the *Excise Tariff Act 1921* is:

(a) delivered for home consumption; and

(b) delivered to a person who is included in a class determined under section 77FE of this Act;

a Collector may request, in writing, the person to account to the satisfaction of the Collector that the spirit has been used for an industrial, manufacturing, scientific, medical, veterinary or educational purpose.

Payment of duty equivalent

(3) If a person does not account as requested under subsection (1) or (2), the person must, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the duty that would have been payable on the spirit if:
  (a) there had been no approval or determination (as the case requires); and
  (b) the spirit had been entered for home consumption on the day on which the Collector made the demand.

Note 1: Subitems 3.1, 3.2 and 3.10 of the Schedule to the *Excise Tariff Act 1921* set out the non-free rates of duty for spirit.

Note 2: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

No effect on other liabilities

(4) This section does not affect the liability of a person arising under or because of:
  (a) any other provision of this Act; or
  (b) a security given under this Act.

Request or demand not a legislative instrument

(5) The following are not legislative instruments:
  (a) a request under subsection (1) or (2);
  (b) a demand under subsection (3).

77FI Delivery from CEO's control of brandy, whisky or rum

(1) Brandy, whisky or rum manufactured in Australia must not be delivered from the CEO's control unless it has been matured by storage in wood for at least 2 years.

(2) In this section:

brandy means a spirit distilled from grape wine in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to brandy.

grape wine has the same meaning as in Subdivision 31-A of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

rum means a spirit obtained by the distillation of a fermented liquor derived from the products of sugar cane, being distillation carried out in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to rum.

whisky means a spirit obtained by the distillation of a fermented liquor of a mash of cereal grain in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to whisky.

77FJ Person must not abstract denaturing substances in spirit classified to subitem 3.8

(1) A person commits an offence if:
  (a) spirit classified to subitem 3.8 of the Schedule to the *Excise Tariff Act 1921* is delivered for home consumption; and
  (b) the person abstracts the whole or a part of a denaturing substance from the spirit; and
  (c) the person has not been given permission by the CEO to abstract the whole or the part of the denaturing substance.

Penalty: 50 penalty units.

(2) The CEO may, in writing, give a person permission to abstract the whole or a part of a denaturing substance for the purposes of paragraph (1)(c).

(3) A permission under subsection (2) is not a legislative instrument.

77FK Offence in relation to stills

(1) A person commits an offence if:
  (a) the person does any of the following things:
    (i) makes or commences to make any still;
    (ii) removes, sets up or erects any still;

(iii) sells or otherwise disposes of, or purchases or otherwise acquires any still, either by itself or with other property, or as part of any premises;

(iv) imports any still;

(v) has possession, custody or control of any still; and

(b) the still is of a capacity exceeding 5 litres; and

(c) the person is not a licensed manufacturer; and

(d) the person has not been given permission by the CEO to do the thing.

Penalty: 50 penalty units.

(2) Subsection (1) does not apply to an act done by an officer in the course of performing a function or exercising a power under this Act or the *Excise Tariff Act 1921*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) The CEO may, in writing, give a person permission to do a thing mentioned in paragraph (1)(a).

(4) A permission under subsection (3) is not a legislative instrument.

77FL Offence in relation to describing spirits as “old” or “very old”

(1) A person commits an offence if the person:

(a) does either of the following:

(i) describes any spirit as “old”, or in a way which could reasonably lead to the belief that the spirit has been matured for at least 5 years;

(ii) describes any spirit as “very old”, or in a way which could reasonably lead to the belief that the spirit has been matured for at least 10 years; and

(b) does so in relation to trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories.

Penalty: 10 penalty units.

(2) Subparagraph (1)(a)(i) does not apply if the spirit has been matured by storage in wood for at least 5 years.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) Subparagraph (1)(a)(ii) does not apply if the spirit has been matured by storage in wood for at least 10 years.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) Absolute liability applies to paragraph (1)(b).

74 Part VIIB (heading)

Repeal the heading, substitute:

Part VIIB—Special provisions relating to fuel

75 Sections 77G to 77J

Repeal the sections, substitute:

77G Fuel blending is to be treated as manufacture

(1) For greater certainty so far as concerns the application of the provisions of this Act, fuel blending to produce goods covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* is taken to constitute the manufacture of those goods.

(2) Subsection (1) does not imply that, in the absence of such a provision, the blending of substances (whether fuel products or not) would not constitute the manufacture of the substance produced by the blending.

(3) In this section:

fuel product means:

(a) any excisable goods classified to item 10, 15, 20 or 21 of the Schedule to the *Excise Tariff Act 1921*; or

(b) any imported goods that would be classified to item 10 or 15 of that Schedule if they were manufactured in Australia.

77H Blending exemptions

(1) Goods that are the product of the blending of 1 or more eligible goods (with or without other substances) are taken not to be goods

covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* if:

(a) excise duty or a duty of Customs has been paid at the same rate on all the eligible goods and the other substances (if any); or

(b) the goods are covered by a determination in force under subsection 95-5(1) of the *Fuel Tax Act 2006*.

(2) However, subsection (1) does not apply if any of the eligible goods or other substances on which excise duty or a duty of Customs has been paid are:

(a) denatured ethanol for use as fuel in an internal combustion engine; or

(b) biodiesel; or

(c) taxable fuel for which any entity has been entitled to a fuel tax credit under the *Fuel Tax Act 2006*.

Legislative instrument

(3) Goods that are the product of the blending of 1 or more eligible goods (with or without other substances) are taken not to be goods covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* if the circumstances specified in an instrument under subsection (4) exist.

(4) The CEO may, by legislative instrument, specify circumstances for the purposes of subsection (3).

Definition

(5) In this section:

eligible goods means goods covered by paragraph 10(a), (b), (c), (d), (e) or (f) of the Schedule to the *Excise Tariff Act 1921*.

77J Goods that are not covered by subitem 10.25, 10.26, 10.27, 10.28 or 10.30

If:

(a) goods (the ***delivered goods***) classified to subitem 10.25, 10.26, 10.27, 10.28 or 10.30 of the Schedule to the *Excise Tariff Act 1921* are delivered for home consumption; and

(b) a person uses the delivered goods as a solvent; and
(c) the person manufactures or produces other goods by carrying out a recycling process on the delivered goods; and
(d) the other goods are for use as a solvent by the person; and
(e) apart from this section, the other goods would be classified to the subitem of that Schedule that applied to the delivered goods;

then that subitem does not apply to the other goods.

76 Section 77K

Omit "item 17", substitute "item 20 or 21".

77 Section 77K

Omit "item 11", substitute "item 10".

78 After subsection 78(1)

Insert:

(1A) Regulations made for the purposes of subsection (1) may make provision for and in relation to the CEO granting approvals.

79 At the end of section 78

Add:

(3) Excise duty is taken to be remitted in respect of fuel if:
(a) the fuel is used in the manufacture of goods that are not excisable goods; and
(b) the fuel has been chemically transformed (other than by combustion) in that manufacture.

80 Section 78AAAA

Repeal the section.

81 Section 105

Repeal the section.

82 Section 107AA (definition of *forfeited goods*)

Repeal the definition, substitute:

forfeited goods means goods forfeited to the Crown under section 116.

83 Section 107AA (definition of *offence*)

Repeal the definition, substitute:

offence means an offence against this Act.

84 Subsection 107FF(9) (definition of *special forfeited goods*)

Repeal the definition, substitute:

special forfeited goods means goods forfeited to the Crown under paragraph 116(1)(da).

85 After paragraph 116(1)(d)

Insert:

(da) a still made, removed, set up, erected, sold or otherwise disposed of, purchased or otherwise acquired, imported, or in the possession, custody or control of a person, in contravention of section 77FK;

86 Subsections 120(1A) and (1B)

Repeal the subsections.

87 Subsections 120(4A) to (9)

Repeal the subsections.

88 Subsection 159(6) (definition of *excise law*)

Repeal the definition, substitute:

excise law means any Excise Act.

89 Paragraph 162C(1)(e)

After “section 60”, insert “, 77AA or 77FH”.

90 After paragraph 162C(1)(e)

Insert:

(eaa) a decision of the CEO to refuse to give an approval under section 77FD or 77FF;

(eaaa) a decision of the CEO to specify conditions in an approval given under section 77FD or 77FF;

91 Section 163

Repeal the section.

Fuel Tax Act 2006

92 Section 110-5 (paragraph (c) of the definition of *taxable fuel*)

Omit "or 17", substitute ", 20 or 21".

93 Section 110-5 (note to the definition of *taxable fuel*)

Omit "17", substitute "20".

94 Section 110-5 (at the end of the note to the definition of *taxable fuel*)

Add "Item 21 of that Schedule deals with certain condensate.".

Petroleum Excise (Prices) Act 1987

95 Subsection 4(1) (definition of *excisable crude petroleum oil*)

Omit "paragraph 17A(2) in", substitute "subitem 20.5, 20.6 or 20.7 of".

Sea Installations Act 1987

96 The Schedule

Omit "*Spirits Act 1906*".

Taxation Administration Act 1953

97 Subsection 2(2)

Repeal the subsection, substitute:

(2) Despite the definition of ***taxation law*** in subsection (1), an Excise Act (as defined in subsection 4(1) of the *Excise Act 1901*) is not a

taxation law for the purposes of Part III of, and Subdivision 284-B in Schedule 1 to, this Act.

98 Subsection 250-10(2) in Schedule 1 (table items 21 and 23)

Repeal the items.

99 Subsection 250-10(2) in Schedule 1 (table item 24B)

Repeal the item, substitute:

24A	accounting for excisable goods	60(1), (1A), (1B) and (1C)	*Excise Act 1901*
24B	tobacco leaf stock deficiency	77AA	*Excise Act 1901*
24C	accounting for spirit	77FH	*Excise Act 1901*

100 Subsection 250-10(2) in Schedule 1 (table item 37)

Repeal the item.

Part 2—Application, saving and transitional provisions

101 Application—biodiesel and renewable diesel

The amendments made by items 4 to 8 and 10 to 15 apply in relation to fuel imported or manufactured after the commencement of this item.

102 Application and transitional—licences

Licence applications

(1) The amendments made by items 26 to 36 apply in relation to applications made after the commencement of this item.

Period of new licences

(2) The amendment made by item 37 applies to licences granted after the commencement of this item (whether the application for the licence was made before or after that commencement).

Renewal of licences

(3) The amendments made by items 38 to 40 apply in relation to renewal applications made after the commencement of this item (whether the licence was granted before or after that commencement).

Suspension or cancellation of licences

(4) The amendments made by items 41 to 45 apply in relation to licences granted before or after the commencement of this item.

Existing licences to end on 30 September 2006

(5) A licence in force under Part IV of the *Excise Act 1901* immediately before the commencement of this item ceases to be in force at the end of 30 September 2006 (unless cancelled earlier).

103 Application—record keeping

The amendment made by item 49 applies in relation to producer licences or dealer licences granted before or after the commencement of this item.

104 Application—relevant travellers

The amendment made by item 51 applies in relation to goods delivered to a relevant traveller after the commencement of this item (under a permission given before or after that commencement).

105 Application—tobacco leaf

The amendment made by item 65 applies in relation to:

(a) tobacco leaf that a person has or had possession, custody or control of after the commencement of this item; and

(b) tobacco leaf that a person had possession, custody or control of immediately before the commencement of this item.

106 Saving—volume and strength of alcoholic beverages

Despite the amendments made by items 69 and 71, sections 77B and 77FB of the *Excise Act 1901*, as in force immediately before the commencement of this item, continue in effect, after that commencement, until the first set of rules made under section 65 of that Act after that commencement take effect.

107 Application and transitional—repackaged beer

(1) The amendment made by item 72 applies in relation to repackaging that occurs after the commencement of this item.

(2) Paragraph 77FC(a) of the *Excise Act 1901*, as added by this Act, is taken to be satisfied if, before the commencement of this item, beer classified to paragraph 1(C)(2) of the Schedule to the *Excise Tariff Act 1921* was delivered for home consumption (beer packaged in an individual container exceeding 48 litres).

108 Transitional—stabilised crude petroleum oil and petroleum condensate

A reference in section 77K of the *Excise Act 1901* to excise duty attaching to stabilised crude petroleum oil or condensate under item 20 or 21 of the Schedule to the *Excise Tariff Act 1921* is taken to include a reference to excise duty that attached to stabilised crude petroleum oil or condensate under item 17 of that Schedule before the commencement of this item.

109 Saving—confidentiality

Despite the amendment made by item 88, section 159 of the *Excise Act 1901*, as in force immediately before the commencement of this item, continues to apply after that commencement in relation to the following that a person obtained in the course of official employment before that commencement:

(a) protected information to the extent that the information was disclosed or obtained under the *Fuel (Penalty Surcharges) Administration Act 1997* or regulations made under that Act;

(b) a protected document to the extent that the document was made or given under, or for the purposes of, the *Fuel (Penalty Surcharges) Administration Act 1997* or regulations made under that Act.

Schedule 2—Repeal of Acts

1 Repeal of Acts

The Acts specified in this Schedule are repealed.

Coal Excise Act 1949

Distillation Act 1901

Fuel Blending (Penalty Surcharge) Act 1997

Fuel Misuse (Penalty Surcharge) Act 1997

Fuel (Penalty Surcharges) Administration Act 1997

Fuel Sale (Penalty Surcharge) Act 1997

Spirits Act 1906

[*Minister's second reading speech made in—*
House of Representatives on 11 May 2006
Senate on 13 June 2006]

(56/06)