



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

No. 81, 2015

**An Act to amend the law relating to energy grants,
customs and excise, and for other purposes**

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

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**An Act to amend the law relating to energy grants,
customs and excise, and for other purposes**

[Assented to 26 June 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Energy Grants and Other Legislation
Amendment (Ethanol and Biodiesel) Act 2015*.

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 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | 1 July 2015. | 1 July 2015 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Customs Act 1901

1 Before subsection 105B(1)

Insert:

Extinguishing duty on excise-equivalent goods

2 Subsection 105B(1)

Before “extinguished”, insert “wholly or partly”.

3 After subsection 105B(1)

Insert:

(1A) The liability is:

- (a) wholly extinguished unless paragraph (b) applies; or
- (b) if the excise-equivalent goods are a biofuel blend—
extinguished except for an amount equal to any duty that
would have been payable on the biofuel constituents of the
blend if they had not been included in the blend.

4 Subsection 105B(2)

Before “extinguished”, insert “so”.

5 Subsection 105B(3)

Repeal the subsection, substitute:

Exceptions

- (3) Subsection (1) does not apply to an amount of duty if:
 - (a) it is calculated as a percentage of the value of the
excise-equivalent goods because of section 9 of the *Customs
Tariff Act 1995*; or
 - (b) the excise-equivalent goods are classified to:

- (i) subheading 2207.20.10 (denatured ethanol) or 3826.00.10 (biodiesel) of Schedule 3 to the *Customs Tariff Act 1995*; or
- (ii) an item in the table in Schedule 5, 6, 7, 8, 9, 10 or 11 to that Act that relates to a subheading mentioned in subparagraph (i).

Note: Subsection 105C(2) deals with the payment of the amount.

Definitions

(4) In this section:

biofuel blend means goods classified to:

- (a) subheading 2710.12.62, 2710.19.22, 2710.20.00, 2710.91.22, 2710.91.62, 2710.91.80, 2710.99.22, 2710.99.62, 2710.99.80, 3824.90.50, 3824.90.60 or 3826.00.20 of Schedule 3 to the *Customs Tariff Act 1995*; or
- (b) an item in the table in Schedule 5, 6, 7, 8, 9, 10 or 11 to that Act that relates to a subheading mentioned in paragraph (a).

biofuel constituent, for a biofuel blend, means a constituent of the blend that is:

- (a) biodiesel; or
- (b) denatured ethanol;

(within the meaning of the subheading of Schedule 3 to the *Customs Tariff Act 1995* to which the blend is classified or relates).

6 Paragraph 105C(2)(b)

Before “subsection 105B(3)”, insert “paragraph 105B(1A)(b) or”.

Excise Act 1901

7 Paragraph 77H(1)(a)

Repeal the paragraph, substitute:

- (a) both:
 - (i) for each of the eligible goods and other substances, excise duty or a duty of Customs has been paid (unless the applicable duty when entered for home consumption was nil); and

- (ii) apart from any denatured ethanol for use as fuel in an internal combustion engine, or biodiesel, the rate of each of those duties is the same; or

8 Subsection 77H(2)

Repeal the subsection, substitute:

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

Fuel Tax Act 2006

9 Subsection 43-7(7)

Repeal the subsection, substitute:

Working out the fuel tax for certain fuels containing ethanol or biodiesel

- (7) Work out the *effective fuel tax under subsection 43-5(2) for taxable fuel:
 - (a) that you acquired, manufactured or imported; and
 - (b) that is, or is a blend containing, ethanol or *biodiesel; and
 - (c) to which neither subsection (1) nor (2) of this section applies;as if all the ethanol or biodiesel were manufactured or produced in Australia.

Note: As you may not know whether the ethanol or biodiesel is imported or manufactured domestically, this subsection requires you to work out the effective fuel tax assuming that they were manufactured domestically.

10 Subparagraph 75-15(1)(c)(iv)

Repeal the subparagraph.

11 Application of amendments

- (1) The amendments made by items 1 to 6 apply in relation to:
 - (a) excise-equivalent goods imported into Australia on or after 1 July 2015; and

- (b) excise-equivalent goods imported into Australia before 1 July 2015, if the time for working out the rate of import duty on the goods had not occurred before that day.
- (2) The amendments made by items 7 and 8 apply in relation to:
 - (a) eligible goods manufactured or produced in, or imported into, Australia on or after 1 July 2015; and
 - (b) eligible goods manufactured or produced in Australia before 1 July 2015 if:
 - (i) on that day, the goods were either subject to the CEO's control, or in the stock, custody or possession of, or belonged to, a manufacturer or producer of the goods; and
 - (ii) no duty of excise had been paid on the goods before that day; and
 - (c) eligible goods imported into Australia before 1 July 2015, if the time for working out the rate of import duty on the goods had not occurred before that day.
- (3) The amendment made by item 9 applies in relation to:
 - (a) acquisitions in Australia of taxable fuel on or after 1 July 2015; and
 - (b) the manufacture or production in, or importation into, Australia of taxable fuel on or after 1 July 2015; and
 - (c) the manufacture or production in Australia of taxable fuel before 1 July 2015 if:
 - (i) on that day, the fuel was either subject to the CEO's control, or in the stock, custody or possession of, or belonged to, a manufacturer or producer of the fuel; and
 - (ii) no duty of excise had been paid on the fuel before that day; and
 - (d) the importation into Australia of taxable fuel before 1 July 2015, if the time for working out the rate of import duty on the fuel had not occurred before that day.

12 Transitional—anti-avoidance

Despite the repeal made by item 10, the *Fuel Tax Act 2006* continues to apply, on and after the commencement of that item, in relation to a fuel tax benefit an entity got before that commencement, as if that repeal had not happened.

Part 2—Repeals

Energy Grants (Cleaner Fuels) Scheme Act 2004

13 The whole of the Act

Repeal the Act.

Part 3—Consequential amendments

Coastal Trading (Revitalising Australian Shipping) Act 2012

14 Subsection 6(1) (paragraph (a) of the definition of *liquid fuel product*)

Repeal the paragraph, substitute:

- (a) biodiesel (within the meaning of the *Excise Tariff Act 1921*);

Fuel Tax Act 2006

15 Section 43-1

Omit “to fund cleaner fuel grants and”.

16 Subsection 43-5(3)

Repeal the subsection, substitute:

- (3) In applying subsection (2), disregard a benefit under the *Product Stewardship (Oil) Act 2000*.

17 Subsections 43-10(1) and (2)

Repeal the subsections.

18 Subsection 43-10(6)

Omit “(1) or”.

Product Grants and Benefits Administration Act 2000

19 Section 5 (definition of *cleaner fuel*)

Repeal the definition.

20 Section 8 (table item 4)

Repeal the item.

21 Subsection 9(5)

Repeal the subsection.

22 Section 16A

Repeal the section.

23 Section 27B

Repeal the section.

Taxation Administration Act 1953

24 Subsection 355-65(7) in Schedule 1 (table item 1)

Repeal the item.

Part 4—Transitional provisions

25 Objects

The objects of this Part are:

- (a) to provide for the winding-up of the scheme that provides grants relating to certain cleaner fuels; and
- (b) to allow up to 12 months for claims (and payments) to be made under the scheme for provisional entitlements arising before 1 July 2015; and
- (c) to continue the administration of the scheme in respect of provisional entitlements arising before 1 July 2015.

26 Transitional application of affected provisions

Despite the amendments and repeals made by Parts 2 and 3:

- (a) the Acts so repealed or amended; and
- (b) any instruments in force under any of those Acts immediately before the commencement of this Part;

continue to apply, at and after the commencement of this Part, in relation to any provisional entitlement to a cleaner fuel grant that arose before 1 July 2015, as if those repeals and amendments had not happened.

27 Period for making claims after 1 July 2015

- (1) Paragraph 15(2)(e) of the *Product Grants and Benefits Administration Act 2000* applies, after the commencement of this Part, to a claim for a cleaner fuel grant:
 - (a) for biodiesel, renewable diesel or biodiesel blend; and
 - (b) for which a provisional entitlement arose before 1 July 2015;as if that paragraph required the claim to be given to the Commissioner before the earlier of:
 - (c) the end of 3 years after the start of the claim period; and
 - (d) 1 July 2016.
- (2) For the purposes of this item, ***biodiesel***, ***biodiesel blend*** and ***renewable diesel*** have the same meanings as in the *Energy Grants (Cleaner Fuels)*

Scheme Act 2004, or in regulations under that Act, as in force immediately before the commencement of this Part.

**28 Part does not limit the operation of section 7 of the Acts
*Interpretation Act 1901***

This Part does not limit the operation of section 7 of the *Acts Interpretation Act 1901*.

[*Minister's second reading speech made in—
House of Representatives on 4 June 2015
Senate on 17 June 2015*]

(100/15)
