

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2006 No. 173**

#### **Issued by authority of the Minister for Revenue and Assistant Treasurer**

*Fuel Tax Act 2006*  
*Fuel Tax Regulations 2006*

*Energy Grants (Credits) Scheme Act 2003*  
*Energy Grants (Credits) Scheme Amendment Regulations 2006 (No. 1)*

*Excise Act 1901*  
*Excise Amendment Regulations 2006 (No. 2)*

*Customs Act 1901*  
*Customs Amendment Regulations 2006 (No. 3)*

The *Fuel Tax Act 2006* (the Fuel Tax Act) establishes a single fuel tax credit that will replace the current system of grants and rebates from 1 July 2006. The new Regulations form an integrated package to give effect to the Fuel Tax Act.

Section 95-100 of the Fuel Tax Act, section 58 of the *Energy Grants (Credits) Scheme Act 2003* (the EGCS Act), section 164 of the *Excise Act 1901* (the Excise Act) and section 270 of the *Customs Act 1901* (the Customs Act) provide that the Governor-General may make regulations prescribing matters required or permitted by the Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

#### ***Fuel Tax Regulations 2006***

The new Fuel Tax Regulations:

- prescribe the maximum container size for which suppliers are able to claim a credit for fuel sold for use other than in an internal combustion engine as 20 litres; and
- prescribe those fuels specified in item 10.28 of the Schedule to the *Excise Tariff Act 1901*, in addition to those mentioned in paragraph 41-10(2)(b) of the Act, for which suppliers are able to claim a credit for fuel sold for use other than in an internal combustion engine.

This enables private 'household' users of fuels used in non-fuel applications, such as solvents, to purchase the products effectively free of fuel tax.

***Energy Grants (Credits) Scheme Amendment Regulations 2006 (No. 1)***

The Energy Grants (Credits) Scheme Regulations:

- remove the stipulation that a blend of biodiesel and diesel must consist principally of diesel to qualify as ‘off-road diesel fuel’;
- remove the stipulation that a blend of biodiesel and diesel must consist principally of biodiesel to qualify as ‘on-road alternative fuel’; and
- provide the grant rates for each year in the period 1 July 2006 to 30 June 2010 for each of the fuels that are currently prescribed as ‘on-road alternative fuel’.

This is to clarify the eligibility of biodiesel and diesel blends for fuel tax credits under the transitional provisions contained in the *Fuel Tax (Consequential and Transitional Provisions) Act 2006* and provide rates for the phasing out of ‘on-road alternative fuel’ grants.

***Excise Amendment Regulations 2006 (No. 2)***

The Excise Regulations:

- repeal provisions for remissions and refunds of duty for certain fuels where used or intended for use other than in an internal combustion engine;
- repeal provisions for remissions and refunds for the propulsion of a marine vessel by a business entity; and
- limit entitlement to a drawback (or refund for ships’ and aircrafts’ stores) of excise duty on the export of fuel to situations where an entitlement to a fuel tax credit does not exist with respect to the fuel, or otherwise where an entity has an increasing fuel tax adjustment.

Where an entity has or had an entitlement to a fuel tax credit for a quantity of fuel and subsequently has no reasonable prospect of using the fuel for an eligible purpose, it is required to make an increasing adjustment on its Business Activity Statement. The increasing adjustment reduces the amount of tax credits payable to the entity.

***Customs Amendment Regulations 2006 (No. 3)***

The Customs Regulations:

- repeal provisions for remissions or refunds of duty for certain fuels where used or intended for use other than in an internal combustion engine; and
- limit entitlement to a drawback of excise duty on the export of fuel to situations where an entitlement to a fuel tax credit does not exist with respect to the fuel, or otherwise where an entity has an increasing fuel tax adjustment.

The Customs Regulations mirror the Excise Regulations outlined above, with the exception of: repeal of provisions for remission or refund of duty for fuel used in the propulsion of a marine vessel by a business entity; and provisions for the refund of excise duty on ships and aircraft stores, which do not exist under the Customs Act.

The Minister for Justice and Customs agreed for the Customs Regulations as part of this integrated package of regulations, which are consequential to and necessary to effect the Fuel Tax Act.

Industry consultation was undertaken during the development of policy and legislation. Relevant industry sectors were invited to lodge submissions in response to a fuel tax reform discussion paper, which foreshadowed the changes that are contained both in the Fuel Tax Act and in the Regulations. Consultation was also undertaken in the preparation of the principle legislation and its accompanying explanatory memorandum.

Further industry consultation was undertaken as part of the Review of the Schedule to the *Excise Tariff Act 1921* to arrive at 20 litres as the maximum container size for which a packager of fuel is entitled to claim a fuel tax credit under the *Fuel Tax Regulations 2006*. Consultation was also undertaken as part of this review in relation to the remissions and refund arrangements prescribed in the regulations under the Excise Act and Customs Act.

A Regulation Impact Statement was not required for this package of Regulations.

Details of the Regulations are set out in the [Attachment](#).

## ATTACHMENT

***Fuel Tax Act 2006***  
***Fuel Tax Regulations 2006***

Subsection 41-10(2) of the *Fuel Tax Act 2006* (the Fuel Tax Act) provides that, in part, an entity is entitled to a fuel tax credit for taxable fuel that it acquires or manufactures in, or imports into, Australia to the extent that it does so to package the fuel, in accordance with the regulations, for the purpose of making a taxable supply of the fuel for use other than in an internal combustion engine.

The Regulations prescribe fuels and establish the maximum container size for which suppliers of fuel sold for use other than in an internal combustion engine (non-fuel applications) may claim a fuel tax credit. Use as a solvent is an example of a non-fuel application.

As it is intended that fuels used in non-fuel applications be tax free for all users - both business and private, the purpose of the Regulations is to enable private 'household' users to access these products effectively fuel tax free without having to interact with the tax system to claim fuel tax credits.

The Regulations prescribe the maximum container size for which packagers are able to claim a credit for fuel sold for use in non-fuel applications as 20 litres. This amount was decided upon as a result of industry consultation undertaken as part of the Review of the Schedule to the *Excise Tariff Act 1921*.

The Regulations prescribe additional kinds of fuels for which a supplier may claim a fuel tax credit to cover lighter fluid used to fill cigarette and other such lighters. These are in addition to kerosene, mineral turpentine and white spirit as mentioned in paragraph 41-10(2)(b) of the Fuel Tax Act.

***Energy Grants (Credits) Scheme Act 2003***  
***Energy Grants (Credits) Scheme Amendment Regulations 2006 (No. 1)***

Section 4 of *Energy Grants (Credits) Scheme Act 2003* (the EGCS Act) defines, in part, 'off-road diesel fuel' and 'on-road alternative fuel' to include certain fuels as specified in the regulations. Paragraph 57(1)(b) of the EGCS Act provides that the amount per litre for a fuel (or per cubic metre for a gaseous fuel) for the purposes of calculating the amount of an energy grant provided under the EGCS is that specified in, or worked out in accordance with, the regulations.

The Regulations give effect to the phased implementation of the Government's fuel tax reform contained in the *Fuel Tax (Consequential and Transitional Provisions) Act 2006*. From 1 July 2006 to 30 June 2008, activities and fuels eligible for a grant for the use of 'off-road diesel fuel' under the EGCS Act will be entitled to a full fuel tax credit. Those activities and fuels not eligible under the EGCS Act will be entitled to a 50 per cent credit as of 1 July 2008, and then a full credit from 1 July 2012. It is therefore necessary for users of fuel for off-road business purposes to determine their entitlements to fuel tax concessions over the transition period according to whether they would have been entitled under the EGCS Act.

The Regulations amend the definition of 'off-road diesel fuel' for the purpose of claiming fuel tax credits during the transition period of the Fuel Tax Act. The

purpose of the amendment to the definition of ‘off-road diesel fuel’ is to clarify the eligibility of blends of biodiesel and diesel for fuel tax credits. The stipulation that the blend must consist principally of diesel was removed. This enables users of blends of biodiesel and diesel of any proportion to claim a fuel tax credit for fuel used in off-road business activities that were eligible to an ‘off-road credit’ under the EGCS Act.

The amendment to the definition of ‘on-road alternative fuel’ under the EGCS Act enables eligible claimants to make claims for on-road use of blends of biodiesel and diesel as ‘on-road alternative fuel’ during the transition period. Currently the meaning of ‘on-road alternative fuel’ is limited to blends of biodiesel and diesel consisting primarily of biodiesel.

In addition, a table has been included containing the grant rates for ‘on-road alternative fuel’ during the transition period to reflect the Government’s decision to phase out the grants over four years, between 1 July 2006 and 1 July 2010. A formula for the calculation of grants for blends of biodiesel and diesel is also provided.

***Excise Act 1901***

***Excise Amendment Regulations 2006 (No. 2)***

**and**

***Customs Act 1901***

***Customs Amendment Regulations 2006 (No. 3)***

Subsection 78(1) of the *Excise Act 1901* (the Excise Act) allows remissions, rebates and refunds in respect of excisable goods generally or in respect of the goods included in a class of excisable goods in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed. Subsection 78(2) states that regulations may prescribe the amount, or the means of determining the amount, of any remission, rebate or refund of excise duty that may be allowed for the purposes of subsection 78(1). Section 79 states that regulations may make provision for and in relation to allowing drawbacks of excise duty. Section 160A states that ships’ and aircrafts’ stores are not liable to excise duty.

Subsection 163(1) of the *Customs Act 1901* (the Customs Act) allows the regulations to prescribe circumstances, conditions and restrictions for remission, refund and rebate of customs duty. Subsection 168(1) provides that the regulations may make provision for and in relation to allowing drawbacks of duty paid on goods imported into Australia.

The Regulations repeal certain provisions for the remission or refund of excise or customs duty for certain fuels where they are used or intended for use other than in an internal combustion engine. These provisions were repealed as effective tax free treatment for these products will be delivered by a fuel tax credit under the Fuel Tax Act.

The *Excise Amendment Regulations 2006 (No. 2)* (the Excise Amendment Regulations) repeal of provisions for remission or refund of duty for the use of kerosene in an internal combustion engine for the propulsion of a marine vessel by a business entity. These provisions do not exist under the Customs Act and therefore do not apply to the *Customs Amendment Regulations 2006 (No. 3)*.

The Regulations limit entitlement to a drawback of excise or customs duty on the export of fuel to situations where an entitlement to a fuel tax credit does not exist with respect to the fuel, or otherwise where an entity has an increasing fuel tax adjustment. This is to ensure that only one or the other – a fuel tax credit or a drawback of duty - is claimable for a quantity of fuel.

Similar provisions were made for the refund of excise duty on ships' and aircrafts' stores that are fuel under the Excise Amendment Regulations. These provisions do not exist under the Customs Act.