## EXPLANATORY STATEMENT

**Select Legislative Instrument 2011 No. 194**

Issued by authority of the Assistant Treasurer and Minister for Home Affairs

Subject - *Excise Act 1901
Excise Amendment Regulations 2011 (No. 1)

Customs Act 1901
Customs Amendment Regulations 2011 (No. 2)

Fuel Tax Act 2006
Fuel Tax Act Amendment Regulations 2011 (No. 1)

Energy Grants (Cleaner Fuels) Scheme Act 2004
Energy Grants (Cleaner Fuels) Scheme Amendment Regulations 2011 (No. 1)*

Section 164 of the *Excise Act 1901* (the Excise Act) provides that the Governor‑General may make regulations not inconsistent with that Act prescribing all matters which are required by that Act or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to that Act or for the conduct of any business relating to excise.

The Excise Amendment Regulations 2011 (No. 1) (the Excise Amendment Regulations) provide an automatic remission of excise duty imposed on liquefied petroleum gas (LPG), and liquefied natural gas (LNG) where those fuels are for use other than in an internal combustion engine in a motor vehicle or vessel. The Excise Amendment Regulations also make other necessary changes, which are detailed in the Attachment.

Section 270 of the *Customs Act 1901* (the Customs Act) provides that the Governor‑General may make regulations not inconsistent with that Act prescribing all matters which are required by that Act or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to that Act or for the conduct of any business relating to customs.

The Customs Amendment Regulations 2011 (No. 2) (the Customs Amendment Regulations) amend the *Customs Regulations 1926* to replicate the excise treatment provided to domestically manufactured LPG and LNG for equivalent imported fuel products. The Customs Amendment Regulations provide a remission of customs duty on LPG and LNG where those fuels are for use other than in an internal combustion engine in a motor vehicle or vessel. The regulations also make other minor changes as a consequence of the introduction of excise-equivalent customs duty on gaseous fuels by the *Customs Tariff (Taxation of Alternative Fuels) Act 2011*.

Section 95-100 of the *Fuel Tax Act 2006* provides that the Governor‑General may make regulations prescribing matters required or permitted by that Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The Fuel Tax Amendment Regulations 2011 (No. 1) (the Fuel Tax Amendment Regulations) set out relevant fuel blends which qualify under the *Fuel Tax Act 2006* for fuel tax credits at the fuel tax rate that applies to petrol and diesel. The Fuel Tax Amendment Regulations also provide a conversion rate that enables the road user charge to be applied to LNG and CNG. Further information can be found in the Attachment.

Section 9 of the *Energy Grants (Cleaner Fuels) Scheme Act 2004* (the Energy Grants Act) provides that the Governor‑General may make regulations prescribing matters required or permitted by that Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The Energy Grants (Cleaner Fuels) Scheme Amendment Regulations 2011 (No. 1) amend the *Energy Grants (Cleaner Fuels) Scheme Regulations 2004* to remove the end date of the biodiesel grant in regulation 5. The Regulations also make other changes to facilitate the continuation of grants for biodiesel and renewable diesel.

Further details of the Regulations are set out in the Attachment.

The above Regulations accompany the *Taxation of Alternative Fuels Legislation Amendment Act 2011*, the *Excise Tariff Amendment (Taxation of Alternative Fuels) Act 2011*, the *Customs Tariff Amendment (Taxation of Alternative Fuels) Act 2011*, and the *Energy Grants (Cleaner Fuels) Scheme Amendment Act 2011,* which introduce effective taxation on gaseous fuels from 1 December 2011. These regulations implement measures to complement this legislation. The Regulations also commence from 1 December 2011.

The regulations will be registered on the Federal Register of Legislative Instruments.

A Regulation Impact Statement (RIS) was prepared for the alternative fuels policy as announced in the 2010-11 Budget and was included in the Explanatory Memorandum for the *Taxation of Alternative Fuels Legislation Amendment Act 2011* and related Acts. Details of public consultation on the alternative fuels taxation amendments are set out in the RIS. The measures set out in the above amending Regulations are covered by the original RIS, and a separate RIS is not required.

Public consultation on Exposure Draft Regulations was carried about between 2 August 2011 and 15 August 2011, including seeking information on a list of specific issues. Submissions received from industry broadly endorsed the draft regulations and requested minor changes. Minor amendments were made to the regulations to improve the operation of the provisions, and to assist industry compliance. These amendments included minor changes to the structure and wording of the provisions. Further information is in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

1101443A, 1110561A, 1110563A, 1101441A**Attachment**

**Excise Amendment Regulations 2011 (No. 1) and Customs Amendment Regulations 2011 (No. 2)**

Automatic remissions

Excise and customs legislation provides for the remission, refund or rebate of excise and customs duty in specific circumstances. Where a remission circumstance applies, duty that would be otherwise payable is not paid, whereas refunds or rebates occur when duty that has been paid is returned under certain circumstances.

Section 78 of the *Excise Act 1901* provides a power for regulations to be made to set out the circumstances of excise remissions, rebates and refunds of excise duty. Similarly, section 163 of the *Customs Act 1901* provides a power for regulations to be made to set out the circumstances in which refunds, rebates and remissions of customs duty can be made.

Automatic remissions of excise duty on LPG and LNG will be provided in regulation 50A of the *Excise Regulations 1925* (Schedule 1, item 5, which inserts new items 8 and 9 into regulation 50A) to ensure that the intended use of these fuels in non‑transport applications, including use in forklift vehicles and similar vehicles operated mainly off-road, is not subject to excise duty as a transport fuel. Similarly, remission circumstances will be included in regulation 126(1) of the *Customs Regulations 1926* to ensure excise-equivalent customs duty for imported LPG and LNG is subject to remission of duty where the intended use of these fuels is for non-transport applications, including use in forklift vehicles and similar vehicles operated mainly off-road.

Where a quantity of fuel is used for a mixed use, that is, for both non‑transport and transport purposes, no remission will apply to that quantity of fuel. In these circumstances, the business end-user of the fuel will be eligible for a fuel tax credit on the quantity of fuel that is used for a non-transport business purpose.

The automatic remissions in the excise regulations will apply up to the point at which distributors of LPG and LNG supply end-users. To facilitate this, the regulations provide that the remission applies at the time that the goods are delivered by a licensed person or a holder of a permission under section 61C of the *Excise Act 1901*.

*Example 1*: Elizabeth’s business is licensed for excise purposes. It supplies LPG upon which duty has not been paid to Kathleen’s business for the purposes of heating. As Kathleen will not be using the LPG for a transport purpose, the automatic remission will apply, and Elizabeth will not need to pay excise duty to the Australian Taxation Office as a transport fuel for this transaction.

Section 61C of the *Excise Act 1901* allows the Commissioner of Taxation to give a permission to entities to pay excise duty periodically (a Periodic Settlement Permission) rather than at the time when goods enter home consumption (that is, enter the domestic market). The automatic remission provided under the Excise Amendment Regulations can be applied up to the point where a delivery has been made.

*Example 2*: Huey’s business is licensed for excise purposes and supplies LNG. Daisy’s business is an LNG distributor which is not licensed for excise purposes, but holds a section 61C permission under the *Excise Act 1901*. Daisy’s business delivers the product from Huey’s business. As a distributor, Daisy is aware that this fuel is to be used for a transport purpose by the end user, and therefore duty will be payable as a transport fuel. Daisy will be required to pay duty because the fuel is to be used for a dutiable purpose.

Please note that the above material concerning entitlement to full automatic remissions will apply until 30 June 2012, after which it may be affected by the Government’s intention to apply a carbon price on the non-transport use of gaseous fuels through the fuel tax system.

Drawbacks of excise on LPG

References to LPG contained in regulations 76 and 77 of the *Excise Regulations 1925* that relate to section 58 of the *Excise Act 1901,* remain from a previous taxation arrangement under which excise was paid on LPG. Amendments will be made to remove references to ‘liquefied petroleum gas’ in regulations 76 and 77, ensuring that there is no conflict between the new taxation arrangements and the pre‑existing regulations (see Excise Amendment Regulations, Schedule 1, items 3 and 4).

Conversion rate for duty liability

A conversion rate has been placed in the Excise Amendment Regulations and Customs Amendment Regulations to recognise that LPG is measured in kilograms upstream in the supply chain, whereas downstream it is measured in litres. Similarly Compressed Natural Gas (CNG) is measured in megajoules in some situations, and kilograms in others. See Excise Amendment Regulations, Schedule 1, item 1, regulation 49AAC and Customs Amendment Regulations, Schedule 1, item 6.

The conversion rate in the regulations will allow manufacturers and other licensed parties to convert LPG measured in kilograms into litres, and CNG measured in megajoules into kilograms, for the purposes of calculating the excise payable and the excise-equivalent customs duty payable.

In regard to LPG, the conversion factor can only be used in determining duty liability where the LPG is delivered without being measured using volumetric measurement equipment for the calculation of excise and excise-equivalent customs duty. There is also a restriction of the use of the conversion factor, so that once a business decides to use the conversion factor for LPG in a financial year, it will be required to continue to use the conversion factor, unless the Commissioner or Collector provides permission to revert to the rate per litre for the calculation of duty. For the purposes of these regulations, financial year refers to a 12-month period commencing on 1 July.

The conversion rates will be subject to periodic review to ensure they continue to accurately reflect physical characteristics of LPG and CNG supplied in the Australian market.

*Example 3*: John’s business is licensed for excise purposes. John supplies LPG to wholesale customers who collect the product from John’s LPG refinery (‘wholesale sales’). In these circumstances, the LPG supplied is measured in tonnes by weighbridge measurement and is not measured using temperature and pressure corrected volumetric measurement equipment.

John also separately delivers LPG from his refinery in his own tankers (‘tanker deliveries to customers’). In these circumstances, measurement occurs in litres when delivered to clients.

Regulation 49AAC (1) & (2) ensures that duty payers do not switch between measurement in kilograms and measurement in litres in similar circumstances depending on the energy content of the LPG so as to reduce excise liability.

In this example, John is able to determine duty liability for wholesale sales in kilograms and then convert to litres using the conversion factor. Similarly, John can measure LPG for duty liability purposes in litres for tanker deliveries to customers. However, regulation 49AAC will prevent John from changing the measurement unit from kilograms to litres for wholesale sales, or from litres to kilograms for deliveries to customers. Alternatively, if John wishes to change measurement units he can obtain permission from the Commissioner of Taxation, or wait until the end of the financial year.

Notice requirements

The *Taxation of Alternative Fuels Legislation Amendment Act 2011* includes a section requiring a notice for sales or supplies of LPG to which an LPG remission of excise duty applies. Further details of the requirements of a valid notice and circumstances where notices are not required are set out in the Excise Amendment Regulations, Schedule 1, item 1, regulations 49AAA and 49AAB.

Consequential Amendments

Amendments to Customs Regulations 1D, 32 and 50A were necessary to define excise-equivalent goods, like customable goods and excisable goods for the purposes of dual licensed warehouses and weekly settlement provisions in terms of tariff subheadings. The amendments to the Regulations update those lists of tariff subheadings to reflect changes contained in the *Customs Tariff Amendment (Taxation of Alternative Fuels) Act 2011*.

Schedule 2 of the Customs Amendment Regulations 2011 (No. 2) contains amendments which are operative from 1 January 2012. These amendments are consequential on the commencement of the *Customs Tariff Amendment (2012 Harmonized System Changes) Act 2011*. This Act will create a new tariff subheading 2710.12 to specify light petroleum oils. Within this subheading, the *Customs Tariff Amendment (Taxation of Alternative Fuels) Act 2011* creates new subheading 2710.12.62 to specify blends of petrol and ethanol. Schedule 2 of the Customs Amendment Regulations 2011 amends the *Customs Regulations 1926* to reflect the commencement of subheading 2710.12.62 in the *Customs Tariff Act 1995* and toensure this sub-heading is listed as an excise-equivalent and like customable good in the *Customs Regulations 1926.*

**Fuel Tax Amendment Regulations 2011 (No. 1)**

Taxation of fuel blends

Alternative fuels are often combined with conventional fuels to create blended fuels. Regulation 43-7 will be inserted into the *Fuel Tax Regulations 2006* to provide rules for calculating the fuel tax credit entitlements of some of these blended fuels. For example, for the purposes of calculating fuel tax credits for blends of petrol and ethanol, E10 (a blend of up to 10 per cent ethanol with petrol), qualifies for a full fuel tax credit as if the fuel was made up entirely of petrol. Similarly, B5 (a blend of up to 5 per cent biodiesel with diesel), and B20, (a blend of up to 20 per cent biodiesel with diesel), qualify for a full fuel tax credit as if the fuels were made up entirely of diesel. See Schedule 1, item 1, which inserts a new regulation 43-7 after regulation 41-10 in the *Fuel Tax Regulations 2006*.

Conversion rate for road user charge

The Fuel Tax Amendment Regulations include a conversion rate which enables the road user charge expressed in cents per litre to be converted to a rate in cents per kilogram. This enables the road user charge to be applied to LNG and CNG-powered heavy vehicles that are used on-road. If the Transport Minister determines an alternative conversion rate or a road user charge expressed in cents per kilogram then this will apply instead of the conversion rate in the regulations, effective from the date specified in the determination. See Schedule 1, item 1, which inserts a new regulation 43-10 in the *Fuel Tax Regulations 2006*.

**Energy Grants (Cleaner Fuels) Scheme Amendment Regulations 2011 (No. 1)**

The Energy Grants (Cleaner Fuels) Scheme Amendment Regulations 2011 (No. 1) amend the *Energy Grants (Cleaner Fuels) Scheme Regulations 2004* to remove the end date of the biodiesel grant in regulation 5. After the amendments, the regulations will have no fixed end date for biodiesel. This is consistent with the continuation of grants for biodiesel and renewable diesel under the *Energy Grants (Cleaner Fuels) Scheme Act 2004*. The Regulations also make other necessary changes to facilitate the continuation of grants for biodiesel and renewable diesel, such as the revision of certain definitions.

**Consultation**

Method and purpose of consultation

As part of consultation on these regulations, the Government consulted widely with industry groups likely to be affected by the changes to the taxation arrangements for the gaseous fuels. The regulations and draft explanatory material were made available on the Treasury website, and written submissions were requested. The Government also engaged with industry in other forums to seek feedback and welcomed phone calls and emails from industry on the regulations.

Consultation was undertaken to ensure that the changes operated as intended, and did not impose unnecessary compliance costs on industry.

Parties consulted

The Government consulted with industry groups such as the LPG Australia, Australian Institute of Petroleum, ActewAGL, Origin Energy, BOC Limited, Advanced Fuels Technology, NGVAustralia and the Energy Networks Association. A number of organisations made public submissions.

Consultation also occurred with the Australian Customs and Border Protection Service and the Australian Taxation Office to ensure that the regulations can be administered effectively.

Issues raised in consultations and outcomes

In the main, industry stakeholders considered that the regulations package would operate as intended.

The submissions raised the following issues in relation to the regulations.

* Most stakeholders considered that the automatic remission applying to the non‑transport use of Liquefied Natural Gas (LNG) and Liquefied Petroleum Gas (LPG) would work effectively in practice.
* Some stakeholders suggested that further explanation could be provided in the explanatory material on how the provisions would operate through the use of relevant examples.
	+ This suggestion was implemented (see Examples 1, 2 and 3 above).
* A number of submissions requested greater certainty where a fuel is to be used for mixed purposes, that is, for both non-transport and transport purposes.
	+ Changes were made to the regulations to clarify that no remission of duty applies where LNG or LPG is to be used for a mixed use.
	+ The Explanatory Statement notes that business end‑users that subsequently use the duty paid fuel for a non-transport purpose will be able to receive a fuel tax credit to refund the tax paid on that fuel.
* Informal consultation suggested minor changes to the wording of the notices in regulation 49AAA of the Excise Amendment Regulations 2011.
	+ These changes were made in the course of targeted consultation.

Other minor changes were made to the expression and structure of the regulations to ensure they operate as intended and achieve their policy intent.