

2009

EXPOSURE DRAFT

CARBON POLLUTION REDUCTION SCHEME (CPRS FUEL CREDITS)
BILL 2009

CARBON POLLUTION REDUCTION SCHEME (CPRS FUEL CREDITS)
(CONSEQUENTIAL AMENDMENTS) BILL 2009

EXCISE TARIFF AMENDMENT (CARBON POLLUTION REDUCTION
SCHEME) BILL 2009

CUSTOMS TARIFF AMENDMENT (CARBON POLLUTION REDUCTION
SCHEME) BILL 2009

COMMENTARY

(Circulated by the authority of the
Assistant Treasurer and Minister for Competition Policy and Consumer Affairs,
the Hon Chris Bowen MP)

Note

This Commentary has been prepared for the purpose of assisting readers to understand the exposure drafts of the *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009*, the *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) (Consequential Amendments) Bill 2009*, the *Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009* and the *Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009*. Further changes may be made following the consultation period to better implement the policy outlined in the Government's White Paper, *Carbon Pollution Reduction Scheme: Australia's Low Pollution Future*. When the bills are introduced into Parliament, an explanatory memorandum will be tabled which may differ from this Commentary.

Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
ATO	Australian Taxation Office
Authority	The Australian Climate Change Regulatory Authority
Average unit charge	The 6-month average Australian emissions unit auction charge
BAS	Business Activity Statement
CNG	Compressed natural gas
CO ₂ -e	Carbon dioxide equivalent
cpl	Cents per litre
CPRS Bill	<i>Carbon Pollution Reduction Scheme Bill 2009</i>
CPRS Fuel Credits (Consequential Amendments) Bill	<i>Carbon Pollution Reduction Scheme (CPRS Fuel Credits) (Consequential Amendments) Bill 2009</i>
CPRS Fuel Credits Bill	<i>Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009</i>
Customs Tariff Act	<i>Customs Tariff Act 1995</i>
Customs Tariff Amendment Bill	<i>Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009</i>
Emissions factor	The carbon dioxide-equivalent (CO ₂ -e) emissions per litre of diesel; equal to 0.0027 tonnes per litre
Energy Grants Act	<i>Energy Grants (Credits) Scheme Act 2003</i>
Excise Tariff Act	<i>Excise Tariff Act 1921</i>
Excise Tariff Amendment Bill	<i>Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009</i>
Fuel Tax Act	<i>Fuel Tax Act 2006</i>
Gaseous fuels	LPG, LNG, CNG
ITAA 1997	<i>Income Tax Assessment Act 1997</i>

<i>Abbreviation</i>	<i>Definition</i>
LNG	Liquefied natural gas
LPG	Liquefied petroleum gas
TAA	<i>Taxation Administration Act 1953</i>
The Scheme	The Carbon Pollution Reduction Scheme
White Paper	<i>Carbon Pollution Reduction Scheme: Australia's Low Pollution Future, White Paper, December 2008</i>

General outline

Fuel tax adjustment arrangements

The Government recognises that people have limited flexibility to respond quickly to changes in fuel prices but that, over time, transport choices are influenced by price changes. In the White Paper, *Carbon Pollution Reduction Scheme: Australia's Low Pollution Future*, the Government outlined transitional arrangements for fuels to give households and businesses time to adjust to the Carbon Pollution Reduction Scheme ('the Scheme').

The Government will provide 'cent-for-cent' reductions in fuel taxes as a transitional measure. It will also provide transitional assistance to agriculture, fishing and heavy on-road transport industries. Liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG) will also receive assistance.

The *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009*, the *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) (Consequential Amendments) Bill 2009*, the *Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009* and the *Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009* implement these commitments.

Current fuel tax arrangements

Unlike other emissions sources, fuels are currently subject to their own tax regime.

The fuel tax regime consists of excise on certain domestically manufactured fuels and excise-equivalent customs duty on the corresponding imported fuels. These include petrol, diesel, fuel oil, kerosene, benzene, toluene, xylene, biodiesel and fuel ethanol. A general fuel tax rate of 38.143 cents per litre applies to these, and a special rate of 2.854 cents per litre applies to kerosene and gasoline used for domestic air flights.

LPG, LNG, CNG and certain other fuels are currently outside the fuel tax regime.

The fuel tax regime also provides fuel tax credits to remove or reduce the incidence of fuel tax from business inputs so that fuel tax falls primarily on the consumption of fuel for transport on public roads. Consequently, most businesses effectively do not pay fuel tax, other than for fuel used in light vehicles on-road or, to the extent of the road user charge, for heavy vehicles on-road.

Fuel tax adjustment

Initial fuel tax cut

The *Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009* and *Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009* will initially reduce excise and excise-equivalent customs duty (fuel tax) on 1 July 2010 for all fuels currently subject to the general rate of 38.143 cents per litre.

These Bills will cut fuel taxes on a ‘cent-for-cent’ basis to offset the initial price impact on fuel of introducing the Scheme. At the end of the three years, the Government will review this adjustment mechanism.

The tax cut will be based on the expected rise in fuel prices flowing from the Scheme. As different fuels emit different amounts of carbon when they burn, their prices will increase according to the volume of their emissions.

To minimise compliance costs, an across-the-board fuel tax cut will be made, based on the impact of the Scheme on diesel prices. This will provide ‘cent-for-cent’ assistance for diesel users.

Because diesel emits more carbon than petrol, the fuel tax cut will provide more than ‘cent-for-cent’ assistance for petrol users, which make up the majority of motorists. However, diesel use is becoming more common as fuel and vehicle standards improve. Basing the fuel tax cut on diesel will ensure that the Government’s ‘cent-for-cent’ commitment is delivered for both fuels.

The fuel tax cut on 1 July 2010 will be based on the average Australian emissions unit auction charge (‘average unit charge’) established in the first half of 2010 through emissions unit auctions.

Periodic adjustment mechanism

The Government will periodically assess the adequacy of the initial fuel tax cut and adjust fuel taxes accordingly. At the end of the three years, the Government will review this adjustment mechanism.

The *Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009* and *Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009* introduce a mechanism to automatically assess the size of the fuel tax rate every six months. The assessment will be based on the average emissions unit charge for the previous six months. If the average unit charge exceeds the average unit charge used for the previous cut, there will be a further fuel tax cut. Any reductions will take effect on 1 January and 1 July each year.

Six-monthly assessment strikes a balance between ensuring that the 'cent-for-cent' fuel tax cut reflects unit charge movements and minimising compliance costs for industry.

A one-month lag will occur between the date the new fuel tax rate is calculated and the date the new rate takes effect. This will give the Australian Taxation Office (ATO) time to communicate the rate change to businesses and allow time for businesses to adjust their systems.

Reductions in fuel tax made during this transition period will become permanent after three years.

The fuel tax rate will not increase if the emissions price falls. This legislation will only cut the fuel tax rate (not increase it), to ensure that this assistance benefits motorists.

The final reduction, if needed, will take effect from 1 July 2013.

Assistance to business

Fuel tax credits remove or reduce the incidence of effective fuel tax from business inputs. They ensure that most businesses do not pay effective fuel tax. Therefore, reducing the rate of fuel tax will not benefit those businesses. To address this and provide transitional assistance, the Government is introducing the 'CPRS fuel credits' program for the agriculture and fishing industries and heavy on-road vehicle users.

The ATO will administer the CPRS fuel credit, and businesses will claim it on their business activity statements.

The *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009* and the *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) (Consequential Amendments) Bill 2009* implement the CPRS fuel credits program.

Assistance to the agriculture and fishing industries

Agriculture and fishing businesses pay no effective fuel tax, and so will not benefit from fuel tax cuts. Instead, they will receive a new ‘CPRS fuel credit’. The *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009* will align the credit amount with the six-monthly fuel tax cut assessments. This will ensure that these businesses receive assistance equivalent to the full benefit of the fuel tax cut.

Agricultural and fishing activities will be eligible for the CPRS fuel credit from 1 July 2010 to 30 June 2013. The Government will review this measure after three years as part of the review of the fuel tax adjustment mechanism.

Assistance to heavy on-road transport vehicle users

Heavy vehicle road users will be eligible for a CPRS fuel credit to offset the initial price impact on fuel from introducing the Scheme. This CPRS fuel credit will be provided for one year to heavy on-road transport businesses. The Government will review this measure after one year.

Assistance to LPG, CNG and LNG fuel users

The CPRS fuel credit program will also provide transitional assistance for LPG, CNG and LNG that reflects the lower emissions of those fuels.

LPG, CNG and LNG are alternative transport fuels that compete with petrol and diesel. LPG is Australia’s most widely used alternative fuel, comprising over 5 per cent of the transport fuel market.

LPG, CNG and LNG are not currently subject to fuel tax, so their users will not benefit from fuel tax cuts. Instead, a CPRS fuel credit will be available to liable entities under the Scheme that supply, or apply to their own use, gaseous fuel suitable for transport use.

The volume of emissions from these fuels is substantially lower than the volume from petrol and diesel and therefore the carbon price impact on them will be lower. To reflect this, the amount of credit will be less than the full amount of the fuel tax cut. This will maintain the relative prices of these fuels against petrol and diesel. CNG users will benefit from a credit of around three-quarters of the fuel tax cut, LPG users will benefit from a credit of around two-thirds, and LNG users will benefit from a credit of around one-half.

CNG and LNG fuel suppliers will not be provided with CPRS fuel credits after 30 June 2011. This treatment is the same as heavy on-road transport as these fuels are predominantly used for this purpose. The Government will review this measure after one year.

CPRS fuel credits will cease for LPG on 1 July 2013. The Government will review this measure after three years.

Chapter 1

Automatic adjustment of fuel tax rates – excise duty

Outline of chapter

1.1 The *Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill* ('the Excise Tariff Amendment Bill') amends the *Excise Tariff Act 1921* ('the Excise Tariff Act') to introduce the automatic fuel tax reduction mechanism outlined in the Government's White Paper, *Carbon Pollution Reduction Scheme: Australia's Low Carbon Future* ('the White Paper').

Context of amendments

1.2 From commencement the Carbon Pollution Reduction Scheme ('the Scheme') will cover transport emissions.

1.3 However, the Government recognises that people have limited flexibility to respond quickly to changes in fuel prices but that, over time, transport choices are influenced by price changes.

1.4 To give households and businesses time to adjust to the Scheme, the Government outlined transitional arrangements for fuels in the White Paper.

1.5 The Government will cut fuel taxes on a 'cent for cent' basis to offset the initial price impact on fuel of introducing the Scheme. For three years, the Government will assess periodically the adequacy of this measure and adjust the offset accordingly. At the end of the three years, the Government will review this adjustment mechanism.

1.6 The tax cut for fuel will be based on the expected rise in the price of diesel flowing from the Scheme. Different fuels emit different amounts of carbon when they burn and their prices will increase according to the volume of their emissions. To minimise compliance costs, the fuel tax cut will be made 'across the board' to currently taxed fuels. This will ensure there is 'cent for cent' assistance for diesel users.

1.7 Diesel emits more carbon than petrol on a per litre basis so the fuel tax cut will provide more than ‘cent for cent’ assistance for petrol users, which make up the majority of motorists. However, diesel use is becoming more common as fuel and vehicle standards improve. Basing the fuel tax cut on diesel will ensure that the Government’s ‘cent for cent’ commitment is delivered for the most common fuels used by households.

1.8 Fuel tax currently consists of excise duty on domestically manufactured fuels and excise-equivalent customs duty on imported fuels. Fuel tax is predominantly applied at a rate of 38.143 cents per litre across the range of fuels including petrol, diesel, kerosene, fuel oil, heating oil, biodiesel and fuel ethanol.

1.9 A special rate of 2.854 cents per litre applies to gasoline and kerosene for use as fuels in aircraft. This rate is not imposed for general revenue raising reasons. Instead, it is a method of cost recovery for various services and oversight of the aviation industry provided by the Civil Aviation and Safety Authority and Airservices Australia. Due to the purpose of the tax rate applying to these fuels, they will not receive fuel tax reductions as part of the transition to the CPRS.

1.10 Liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG) are currently not subject to fuel tax.

1.11 The Government will also provide transitional assistance to agriculture, fishing and heavy on road transport industries. LPG, LNG and CNG will also receive assistance through this means. Further detail on these aspects of the transitional arrangements is contained in chapter 3.

Summary of new law

1.12 The amendments introduce a mechanism to automatically adjust the rate of fuel tax on fuels classified to item 10 of the Schedule to the Excise Tariff Act that are subject to the 38.143 cents per litre (cpl) rate. These fuels include petrol, diesel, kerosene, fuel oil, heating oil, biodiesel and fuel ethanol.

1.13 The first reduction will occur on 1 July 2010 with the commencement of the *Carbon Pollution Reduction Scheme Bill 2009* (‘the CPRS Bill’). To minimise the compliance and administration costs of the adjustment mechanism, the rate reductions will be made uniformly across all targeted fuels.

1.14 The need for further reductions, and the amount, will be assessed based on the six-month average Australian emissions unit auction charge ('average unit charge') over a six month period. If the average unit charge at the time of the assessment is greater than the average unit charge that formed the basis of the previous reduction, then the fuel tax rate will be further cut by the difference between the amounts. If the current average unit charge amount is less than the previous average unit charge amount then the rate of fuel tax will remain the same—the fuel tax rate will not be increased if the emissions charge has fallen.

1.15 Information on the six-month average Australian emissions unit auction charge will be published by the Australian Climate Change Regulatory Authority ('the Authority') in accordance with section 271 of the CPRS Bill. (See paragraph 1.33 for the latest information on clause 271.)

1.16 Any further reductions will take place on either 1 January or 1 July of each year, as appropriate.

1.17 The reductions will be assessed and made, if necessary, for three years. The final reduction will be made, if necessary, on 1 July 2013. After the three years have lapsed, the Government will review the mechanism introduced by these amendments.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Automatic adjustment of fuel tax rates for fuels subject to 38.143 cpl every six months from 1 July 2010 to 1 July 2013.	No adjustment provisions.

Detailed explanation of new law

1.18 The Excise Tariff Amendment Bill introduces a new section 6AA to provide for the automatic reduction of the rate of excise on certain fuels classified to item 10 of the Schedule to the Excise Tariff Act. Subsection 6AA(1) of Item 1 of Schedule 1 to the Excise Tariff Amendment Bill defines the following terms used in the remaining provisions of the new section 6AA:

- *6-month average Australian emissions unit auction charge;*

- ***notional rate amount***; and
- ***relevant rate***.

These terms are explained in detail below.

1.19 The fuels subject to the automatic reductions are petroleum condensate and crude oils not used as refinery feedstock, gasoline (petrol) other than for use as fuel in aircraft, diesel, heating oil, kerosene other than for use as fuel in aircraft, fuel oil, denatured fuel ethanol, biodiesel, liquid aromatic hydrocarbons, mineral turpentine, white spirit, petroleum products not elsewhere classified and blends of the above products. The ‘relevant rate’ is the rate of duty applying to these fuels. [*Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009, Schedule 1, Item 1, subsection 6AA(5)*]

1.20 Denatured fuel ethanol and biodiesel are provided with fuel tax reductions like other fuels subject to the 38.143 cpl tax rate in order to maintain simplicity and consistency in the fuel tax system. The offsetting assistance these fuels currently receive will be reduced in line with any fuel tax reductions. Furthermore, these fuels are zero-rated under the Scheme and so producers and manufacturers will not face CPRS obligations against the CO₂-e emissions in these fuels.

1.21 The first fuel tax rate reduction will occur on 1 July 2010 with the commencement of the Scheme. The amount of the reduction on that date will be equal to the average unit charge published by the Australian Climate Change Regulatory Authority (‘the Authority’) in June 2010 multiplied by 0.0027. This average charge will be based on the auctions occurring up to the end of May 2010. [*Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009, Schedule 1, Item 1, subsection 6AA(4)*]

1.22 The 0.0027 multiplier is the carbon dioxide equivalent (CO₂-e) emissions per litre of diesel fuel in transport uses (‘the emissions factor’). The multiplier has been determined in accordance with the *National Greenhouse and Energy Reporting (Measurement) Determination 2008*. The emissions factor for diesel fuel is used as the basis for the initial and any subsequent reductions because it will ensure that the Government’s ‘cent for cent’ commitment is delivered for the most common fuels used by households.

1.23 Any subsequent rate reductions will be based on the difference between the average unit charge published during the month preceding that ‘rate-reducing day’ (refer to paragraph 1.25) and the average unit charge published in the month preceding the most recent rate-reducing day. If the difference is less than zero then the average emissions charge has fallen compared to the previous reduction. In this scenario the fuel tax rate will not change as announced in the White Paper. *[Subsection 6AA(3), Item 1, Schedule 1, Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009]*

1.24 If the amount is greater than zero then the average charge has risen above the previous reduction and households and businesses are facing higher fuel costs. The difference between the average unit charges is multiplied by 0.0027 to determine the amount of the further rate reduction. *[Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009, Schedule 1, Item 1, subsection 6AA(5)]*

1.25 Fuel tax reductions (if required) will occur on 1 January or 1 July of each year after the commencement of the Scheme up to and including 1 July 2013. Each of these days, including 1 July 2010, is defined as a ‘rate-reducing day’. *[Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009, Schedule 1, Item 1, subsections 6AA(2) and 6AA(3)]*

1.26 If a rate reduction as outlined at paragraphs 1.22 and 1.23 is made on a rate-reducing day then the existing rate of fuel tax is substituted for a new rate. The new rate is calculated as the relevant rate of duty applying to the fuel less the rate reduction calculated according to subsection 6AA(5). *[Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009, Schedule 1, Item 1, subsection 6AA(6)]*

1.27 This ensures that the Government’s ‘cent for cent’ fuel tax reduction commitment is met by reducing the pre-existing rate of duty by the increase in the average unit charge.

1.28 Similarly, a rate reduction on a rate-reducing day means that an adjustment is made in relation to blended fuels whose duty is calculated in accordance with section 6G of the Excise Tariff Act. The duty rate for these fuels is defined in the amendments as the ‘notional rate amount’. *[Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009, Schedule 1, Item 1, subsection 6AA(7)]*

1.29 The blended fuels to which section 6G applies are blends of petrol and ethanol, diesel and ethanol, diesel and biodiesel and blends of any of the fuel products classified to item 10 of the Schedule to the Excise Tariff Act that are not elsewhere classified. The automatic adjustment of the ‘notional rate amount’ ensures that the changes to the fuel tax rates applying to the unblended fuels are taken into account when calculating the applicable duty when they are blended together.

1.30 The Bill also requires that the Commissioner of Taxation publish via a public notice in the Gazette the substituted rate, as per subsection 6AA(6), or substituted ‘notional rate amount’, as per subsection 6AA(7), as well as the goods the substituted rate(s) apply to. The publication must be made on, or as soon as practicable after, the rate-reducing day consistent with the publication rules for other excisable products. *[Subsections 6AA(8) and 6AA(9), Item 1, Schedule 1, Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009]*

1.31 The Bill also amends the existing subsection 6G(1) in the Excise Tariff Act to ensure that the adjusted rates of fuel tax that apply as a result of the reductions also apply to blended fuels. The current reference to \$0.38143 is replaced by a ‘notional rate amount’. *[Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009, Schedule 1, Items 2 and 3]*

Application and transitional provisions

1.32 The automatic adjustment provisions commence on the date that Section 3 of the CPRS Bill commences.

Related changes to other legislation

1.33 The Excise Tariff Amendment Bill includes a note outlining a revised clause 271 of the CPRS Bill. Clause 271 of the CPRS Bill requires the Authority to publish information of the average auction price over the last six months. Paragraph 11.26 of the Commentary on the CPRS Bill notes that this information is relevant to the adjustments to fuel tax. The revised clause attached to the Excise Tariff Amendment Bill updates the clause to take account of the information requirements of the amendments outlined above.

Chapter 2

Automatic adjustment of fuel tax rates – customs duty

Outline of chapter

2.1 This chapter outlines the operation of the amendments to the *Customs Tariff Act 1995* ('the Customs Tariff Act') by the *Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2008* ('the Customs Tariff Amendment Bill').

Context of amendments

2.2 The Government will cut fuel taxes on a 'cent for cent' basis to offset the initial price impact on fuel of introducing the Scheme. For three years, the Government will assess periodically the adequacy of this measure and adjust the offset accordingly. At the end of the three years, the Government will review this adjustment mechanism.

2.3 The tax cut for fuel will be based on the expected rise in the price of diesel flowing from the Scheme. Different fuels emit different amounts of carbon when they burn and their prices will increase according to the volume of their emissions. To minimise compliance costs, the fuel tax cut will be made 'across the board' to fuels that are currently taxed. This will ensure there is 'cent for cent' assistance for diesel users.

2.4 Diesel emits more carbon than petrol on a per litre basis so the fuel tax cut will provide more than 'cent for cent' assistance for petrol users, which make up the majority of motorists. However, diesel use is becoming more common as fuel and vehicle standards improve. Basing the fuel tax cut on diesel will ensure that the Government's 'cent for cent' commitment is delivered for the most common fuels used by households.

2.5 Fuel tax currently consists of excise duty on domestically manufactured fuels and excise-equivalent customs duty on imported fuels. Fuel tax is predominantly applied at a rate of 38.143 cents per litre across the range of fuels including petrol, diesel, kerosene, fuel oil, heating oil, biodiesel and fuel ethanol. As outlined in chapter 1, the *Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009* ('the Excise Tariff Amendment Bill') sets out a mechanism to adjust this rate.

Summary of new law

2.6 The amendments introduce a mechanism to substitute the rate of excise equivalent customs duty on fuels when a reduction is made to the excise rate under the Excise Tariff Amendment Bill.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Substitution of excise-equivalent duty rates on fuel subheadings when the automatic adjustment of fuel tax rates in the Excise Tariff are made.	No substitution provisions if excise rates change.

Detailed explanation of new law

2.7 A new section 19A is inserted into the Customs Tariff Act to ensure that the reductions made to the excise rates on fuels also apply to the relevant imported products.

2.8 The new section operates in a similar fashion to the existing section 19 of the Customs Tariff Act which relates to imported tobacco, manufactured tobacco products and alcoholic beverages (primarily beer, spirits and spirit-based beverages) that would be classified to the Excise Tariff if they were manufactured in Australia.

2.9 Where a relevant rate, as defined in the Excise Tariff Amendment Bill, is substituted on a ‘rate-reducing day’, then section 19A will apply the same rate to the subheadings listed in the table. The substitution will be made to the excise-equivalent customs duty rates for these subheadings in Schedules 3, 5, 6 and 7 to the Customs Tariff Act. Only the rate of excise-equivalent duty (that is, the non-*ad valorem*) component of the duty will be substituted. [*Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009, Schedule 1, Item 1*]

Application and transitional provisions

2.10 The amendments to the Customs Tariff Act will commence on the date that Section 3 of the *Carbon Pollution Reduction Scheme Bill 2009* commences.

Chapter 3

CPRS Fuel Credits Program

Outline of chapter

- 3.1 This chapter provides:
- an overview of the CPRS fuel credit program; and
 - an outline of key concepts for the program such as the amount of entitlements and administration of the program.
- 3.2 CPRS fuel credits will be provided through the terms of the *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009* (‘the CPRS Fuel Credits Bill’).

Context of the new law

3.3 The Carbon Pollution Reduction Scheme (‘the Scheme’) will include transport fuels. Therefore the importers, manufacturers or producers of transport fuels will face a Scheme emissions unit obligation against these fuels which is expected to be passed on as an increase in the price of the fuel.

3.4 The Government recognises that people have limited flexibility to respond quickly to changes in fuel prices but that, over time, transport choices are influenced by price changes. To give households and businesses time to adjust to the Scheme, the Government outlined transitional arrangements for fuels in the White Paper.

3.5 Households will benefit directly from ‘cent for cent’ reductions to fuel tax as outlined in Chapter 1.

3.6 The Government will provide assistance to the agriculture, fishing and heavy on-road transport industries. Businesses receive fuel tax credits to offset the fuel tax on their business inputs so they do not benefit from the ‘cent-for-cent’ reduction in fuel tax. The Government therefore is establishing the ‘CPRS fuel credit’ program to provide credits to offset the impact of the Scheme emissions unit charge for these industries.

3.7 Liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG) are alternative transport fuels. These fuels will face a Scheme emissions unit obligation, however, as LPG, LNG and CNG are currently outside of the fuel excise system they will not benefit from the fuel tax reductions applying to other fuels. This would distort the fuel market by decreasing the price of diesel and petrol relative to these fuels. The CPRS fuel credit program will provide credits to maintain the price relativities of gaseous fuels in respect of diesel and petrol in the fuel market.

Summary of new law

3.8 The CPRS fuel credits will provide transitional assistance to eligible industries and fuels to allow households and businesses to adjust to the Scheme. CPRS fuel credits will be provided for a transitional period following the introduction of the Scheme.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>The legislation will provide a CPRS fuel credit to certain industries and fuels for one or three years.</p> <p>Agriculture and fishing businesses will receive CPRS fuel credits for three years.</p> <p>‘Agriculture’ and ‘fishing operation’ activities that meet the definition of the <i>Energy Grants (Credits) Scheme Act 2003</i> will receive a full CPRS fuel credit equal to the fuel tax reductions.</p> <p>Ancillary agriculture and fishing activities will receive a CPRS fuel credit equal to half the full CPRS fuel credit amount.</p> <p>Heavy on-road transport will receive full CPRS fuel credits for one year.</p> <p>LPG transport fuel will receive a CPRS fuel credit for three years equal to 67 per cent of the full CPRS fuel credit.</p>	<p>There is no CPRS fuel credit program.</p>

<i>New law</i>	<i>Current law</i>
CNG and LNG transports fuel will receive CPRS fuel credits for one year. Respectively, the amounts of the credits are 78 per cent and 50 per cent.	There is no CPRS fuel credit program.

Detailed explanation of new law

3.9 The CPRS Fuel Credits Bill will establish a new ‘CPRS fuel credit’ program for eligible businesses and eligible gaseous fuels suppliers. The CPRS fuel credits will offset the impact of the Scheme for specific fuel users and fuels that the Government wishes to assist for a transitional period following the introduction of the Scheme. Currently these users and fuels effectively do not pay any fuel tax and therefore do not benefit from the fuel tax reductions outlined in chapter 1.

3.10 The CPRS fuel credit is to be administered by the Australian Taxation Office (ATO) and claimed on the Business Activity Statement (BAS) in the same manner as fuel tax credits. Accordingly, administration of CPRS fuel credits is aligned with the provisions of the *Fuel Tax Act 2006* (‘the Fuel Tax Act’) and the *Taxation Administration Act 1953*.

Amount of the CPRS fuel credit

3.11 Division 7 sets out the rules for calculating the amount of the CPRS fuel credit. The CPRS fuel credit amount is calculated with reference to the amount of the fuel tax reduction(s) made under the *Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009* (‘the Excise Tariff Amendment Bill’). (Paragraphs 1.21 to 1.24 outline how the fuel tax reduction amount is calculated.)

3.12 CPRS fuel credit amounts will be adjusted automatically with the six monthly adjustments to the fuel tax made under the Excise Tariff Amendment Bill.

CPRS fuel credits – industry-based entitlements

3.13 Sections 6-5, 6-15 and 6-20 of the CPRS Fuel Credits Bill establish the eligible businesses for the CPRS fuel credit program, and the transitional period for which the program will apply to these industries. The industries benefiting will be ‘agriculture’ (which excludes forestry activities) for the period 1 July 2010 to 30 June 2013; ‘fishing’ for the period 1 July 2010 to 30 June 2013; and ‘heavy on-road transport’ (vehicles with a gross vehicle mass exceeding 4.5 tonnes) for the period 1 July 2010 to 30 June 2011.

3.14 Fuels for which agriculture, fishing and heavy on-road transport businesses are entitled to CPRS fuel credits are specified in section 13-1 and include diesel, petrol, fuel oil, heating oil, and kerosene. Eligible businesses using fuel ethanol and biodiesel are not entitled to a CPRS fuel credit for the fuel because these fuels are zero-rated in the Scheme and, accordingly, producers will not face a Scheme emissions unit obligation on the fuel which is passed on to consumers. Where blends are used, the amount is pro-rated to the proportion of the fuel that does not consist of ethanol or biodiesel unless the blend meets the fuel standard under the *Fuel Quality Standards Act 2000* for petrol or diesel, as the case requires.

3.15 Similarly, businesses with industry-based CPRS fuel credit entitlements using LPG, LNG and CNG are not entitled to CPRS fuel credits for these fuels. These fuels have separate entitlements as outlined in paragraphs 3.24 to 3.28 which are expected to have been passed on to the consumer.

Agriculture and fishing businesses

3.16 Agriculture and fishing operations will be entitled to CPRS fuel credits where they undertake eligible business activities. ‘Agriculture’ is defined as having the same meaning as in the *Energy Grants (Credits) Scheme Act 2003* (‘the Energy Grants Act’), excluding carbon sequestration and other forestry activities. ‘Fishing operations’ are also defined according to the Energy Grants Act.

3.17 Activities that meet these definitions will be entitled to a full CPRS fuel credit equal to the amount of the fuel tax reductions.

3.18 Section 6-5 of the CPRS Fuel Credits Bill excludes vehicles travelling on public roads from eligibility—where these vehicles are heavy on-road transport they have a separate entitlement under section 6-15.

3.19 Section 6-10 of CPRS Fuel Credits Bill provides the CPRS fuel credit program to activities incidental to the agriculture and fishing industries. The incidental activities currently receive 50 per cent of the fuel tax credit under the Fuel Tax Act and therefore, under section 7-5, will receive a CPRS fuel credit of 50 per cent of the full CPRS fuel credit.

3.20 The Government will review the assistance for agriculture and fishing businesses after three years, as part of the review of the fuel tax adjustment mechanism.

Heavy on-road transport

3.21 Business users of vehicles on-road with a gross vehicle mass exceeding 4.5 tonnes will be entitled to a CPRS fuel credit for eligible fuels. The amount of the CPRS fuel credit will be equal the fuel tax reductions.

3.22 In addition, vehicles with a gross vehicle mass of 4.5 tonnes used on-road are entitled to a CPRS fuel credit if they were purchased prior to 1 July 2006. Businesses operating these vehicles are entitled to a fuel tax credit for these vehicles so they effectively do not pay fuel tax.

3.23 The Government will review the assistance for heavy on-road transport businesses after one year.

CPRS fuel credits – gaseous fuel entitlements

3.24 Sections 66-25, 6-30 and 6-35 of the CPRS Fuel Credits Bill cover the CPRS fuel credit entitlements for eligible gaseous fuels. Importers, suppliers, manufacturers or producers will benefit from a full CPRS fuel credit for differing transitional periods depending on the fuel.

3.25 The CPRS fuel credit will be provided to LPG suppliers for the period 1 July 2010 to 30 June 2013 as it is predominantly used for private motoring as an alternative to petrol. The Government will review this measure as part of the review of the fuel tax adjustment mechanism.

3.26 The CPRS fuel credit will be provided to LNG and CNG suppliers for the period 1 July 2010 to 30 June 2011. This treatment is the same as heavy on-road transport as LNG and CNG are predominantly used for this purpose. The Government will review this measure after one year.

3.27 As the volume of emissions from these fuels is substantially lower than the volume from petrol and diesel, the Australian emissions unit auction charge impact on them will be lower. To reflect this, these

fuels will receive less than the full amount of the CPRS fuel credit. This will maintain the relative prices of these fuels against petrol and diesel.

3.28 CNG receive a credit of 78 per cent of the full CPRS fuel credit, LPG will receive a credit of 67 per cent, and LNG will receive a credit of around 50 per cent of the full CPRS fuel credit.

CPRS fuel credit entitlement disallowances

3.29 Subdivision 6-B of the CPRS Fuel Credits Bill details the situations where entities otherwise eligible for a CPRS fuel credit under Sections 6-5, 6-10, 6-15, 6-20, 6-25, 6-30 and 6-35 are disallowed.

3.30 Specifically, there is no entitlement to a CPRS fuel credit if another entity was previously entitled to the credit. This ensures that only one entity in the supply chain for the fuel is eligible for the CPRS fuel credit.

3.31 There is also no CPRS fuel credit entitlement for fuel to be used in motor vehicles that do not meet the environmental criteria applying under the Fuel Tax Act. This condition applies to the agriculture, fishing and heavy on-road transport industries entitlements. Motor vehicles that do not meet these criteria can not claim fuel tax credits and therefore pay fuel tax on their fuels. As a result, these businesses will benefit from the fuel tax reductions and do not need to be further compensated by the CPRS fuel credits.

3.32 There is no CPRS fuel credit for fuel to be used in aircraft as this was not a targeted industry by the Government. As outlined in paragraph 1.9, fuels used in aircraft do not pay fuel tax apart from a small cost recovery charge.

Administration of entitlements

3.33 Division 8 specifies that an entitlement under section 6-5, 6-10, 6-15 or 6-20 to a CPRS fuel credit for fuel is worked out on the basis of the fuel's intended use when it is acquired, manufactured or imported. If the fuel is supplied differently, or is not supplied at all, there will be an increasing or decreasing CPRS fuel credit adjustment for the entity that claimed the credit.

3.34 CPRS fuel credit adjustments are included in working out a net fuel amount under the Fuel Tax Act. The net fuel amount determines how much the Commissioner is owed or owes.

3.35 Division 10 specifies that CPRS fuel credits and CPRS fuel credit adjustments are attributed to tax periods (or fuel tax return periods). Generally, for a business taxpayer, the CPRS fuel credit for fuel is to be attributed to the same period as the input tax credit for the fuel (to reduce compliance costs). However, CPRS fuel credit adjustments can be attributed to the tax period (or fuel tax return period) in which the entity becomes aware of the adjustment.

3.36 Claims for CPRS fuel credits can be made up to four years after the entitlement to the credit occurs.

Application and transitional provisions

3.37 The *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009* commences on the same day as Section 3 of the *Carbon Pollution Reduction Scheme Bill 2009*.

Chapter 4

CPRS Fuel Credits – Consequential Amendments

Outline of chapter

4.1 This chapter notes the consequential amendments in the *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) (Consequential Amendments) Bill 2009* ('the CPRS Fuel Credits (Consequential Amendments) Bill') that relate to the *Fuel Tax Act 2006* ('the Fuel Tax Act'), the *Income Tax Assessment Act 1997* ('the ITAA 1997') and the *Taxation Administration Act 1953* ('the TAA'). The amendments are a consequence of the introduction of the *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009* ('the CPRS Fuel Credits Bill').

Context of amendments

4.2 As announced in the Government's White Paper, *Carbon Pollution Reduction Scheme: Australia's Low Pollution Future* ('the White Paper'), the Government will provide assistance to the agriculture, fishing and heavy on-road transport industries. Businesses receive fuel tax credits to offset the fuel tax on their business inputs so they do not receive the 'cent-for-cent' reduction in fuel tax. The Government therefore is establishing the 'CPRS fuel credit' program to provide credits to offset the impact of the Scheme emissions unit charge for these industries.

4.3 Liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG) are alternative transport fuels. These fuels will face a Scheme emissions unit obligation, however, as LPG, LNG and CNG are currently outside of the fuel excise system they will not benefit from the fuel tax reductions applying to other fuels. This would distort the fuel market by decreasing the price of diesel and petrol relative to these fuels. The CPRS fuel credit program will provide credits to maintain the price relativities of gaseous fuels in respect of diesel and petrol in the fuel market.

4.4 The Government also announced in the White Paper that CPRS fuel credits will be administered by the Australian Taxation Office and will be claimed by businesses on their Business Activity Statements.

Summary of new law

4.5 The measures in the CPRS Fuel Credits (Consequential Amendments) Bill are mechanical in nature, necessary to update the Fuel Tax Act, the ITAA 1997 and the TAA with the introduction of the CPRS Fuel Credits Bill and the administrative arrangements announced by the Government.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
The new formula in Section 60-5 of the Fuel Tax Act 2006 for fuel tax liability includes allowances for CPRS fuel credit and increasing or decreasing adjustments for CPRS fuel credits.	The current formula in Section 60-5 of the Fuel Tax Act 2006 for fuel tax liability does not include allowances for CPRS fuel credit and increasing or decreasing adjustments for CPRS fuel credits.

Detailed explanation of new law

4.6 The existing formula in section 60-5 of the Fuel Tax Act for determining the net fuel amount is replaced. The net fuel amount reflects the amount either owed to the Commissioner or the Commissioner owes. The new formula includes the CPRS fuel credit and increasing or decreasing adjustments for CPRS fuel credits.

4.7 The non-economic engagement provision in section 75-10 of the Fuel Tax Act is also extended to include the CPRS Fuel Credits Bill.

4.8 The CPRS Fuel Credits Bill will be included in the relevant provisions considered in determining ‘purpose’ or ‘effect’ under section 75-15 of the Fuel Tax Act.

Application and transitional provisions

4.9 The *Carbon Pollution Reduction Scheme (CPRS Fuel Credits) (Consequential Amendments) Bill* commences on the same day as Schedule 3 to the *Carbon Pollution Reduction Scheme Bill 2009*.

