

The Senate

Economics Legislation Committee

Provisions of:

Fuel Tax Bill 2006

Fuel Tax (Consequential and Transitional
Provisions) Bill 2006

June 2006

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ISBN 0 642 71670 6

Printed by the Senate Printing Unit, Parliament House, Canberra.

Senate Economics Legislation Committee

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CHAPTER 1

INTRODUCTION

Background

1.1 The Fuel Tax Bill 2006 and the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 were introduced into the House of Representatives on 29 March 2006 by the Minister for Revenue and Assistant Treasurer, the Hon. Peter Dutton MP.

1.2 On 11 May 2006, on the recommendation of the Senate Standing Committee for the Selection of Bills, the Senate referred the provisions of the Bills to the Economics Legislation Committee for inquiry and report by 7 June 2006¹.

1.3 An interim report was tabled out of session on 7 June 2006.

Conduct of the Inquiry

1.4 The Committee advertised the inquiry nationally and posted details on its internet site. In addition, it wrote to a number of organisations advising them of the inquiry and inviting them to make submissions.

1.5 The Committee received 35 submissions to its inquiry. These are listed at Appendix 1. The Committee also received a number of papers that were tabled during the hearing; and supplementary correspondence sent after the hearing. These documents are tabled with this report and form part of the Committee's record.

1.6 The Committee held a public hearing at Parliament House in Canberra on Monday, 5 June 2006. Witnesses who presented evidence at the hearing are listed in Appendix 2.

1.7 The Hansard of the Committee's hearing and copies of all submissions are tabled with this report. These documents, plus the Committee's report, are also available on the Committee's website at http://www.aph.gov.au/senate/committee/economics_ctte/fuel_1/index.htm

The Committee's Inquiry

1.8 While these Bills have been under development and consultation for some time, and the policy principles were announced in a series of announcements dating back several years, their passage through the parliament has been rapid for such important, complex and far reaching legislation. The provisions of the Bills were

1 Selection of Bills Committee, *Report No. 4 of 2006*.

referred to the Committee by the Senate on 11 May, while still in the House of Representatives at the second reading stage.

1.9 The provisions of the Bills were referred to the Committee on the last sitting day before the commencement of the consideration of the Budget Estimates by this and the other legislation committees. This process fully occupies most senators, and certainly all members of this Committee, for the full period of the Estimates hearings. Accordingly, the first opportunity available for the Committee to conduct a hearing on the Bills was 5 June.

1.10 The Committee was set 7 June as its reporting date, allowing no time to either draft a report or consider the evidence. The Committee therefore resolved that it would not table its report until Tuesday 13 June, subsequently extended until 14 June, a date which it has only been able to meet with great difficulty.

1.11 Submissions and witnesses have raised several concerns about the Bills that the Committee has not been able to resolve to its satisfaction because of the truncated nature of the inquiry it was required to conduct.

1.12 The Committee thanks those who participated at this inquiry.

CHAPTER 2

THE BILLS

The Bills

2.1 On 15 June 2004 the Prime Minister, the Hon. John Howard MP, released a white paper on energy policy, *Securing Australia's Energy Future*. This paper announced the Government's implementation of a major program of reform to modernise and simplify the fuel excise system, commencing on 1 July 2006 with the introduction of a single fuel tax credit system to replace the current system of fuel tax concessions, refunds and remissions.

2.2 The Bills also provide a framework for the taxation of gaseous fuels from 1 July 2011.

2.3 The Fuel Tax Bill 2006:

Sets out the general principles that a taxpayer is entitled to a fuel tax credit for fuel acquired or manufactured in, or imported into, Australia for use in carrying on their enterprise, as well as setting out further rules affecting eligibility and how credits are claimed.¹

2.4 The Fuel Tax (Consequential and Transitional Provisions) Bill 2006 is a companion bill to the Fuel Tax Bill 2006 and:

Provides for the phased implementation of the fuel tax credit system to particular uses of fuel at certain times from 1 July 2006 to 1 July 2012, when the final changes are in place.²

2.5 Schedules 1 to 3 of the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 amend the:

- *Fuel Sales Grants Act 2000*;
- *Energy Grants (Credits) Scheme Act 2003*;
- *Products Grants and Benefits Administration Act 2000*;
- *States Grants (Petroleum Products) Act 1965*; and
- Fuel Tax Bill 2006.³

1 Explanatory Memorandum, p. 71.

2 Explanatory Memorandum, p. 71.

2.6 The Government anticipates that the introduction of a single fuel tax system to replace the current complex system of fuel tax concessions will:

Lower compliance costs, reduce tax on business and remove the burden of fuel tax from thousands of individual businesses and households. Under fuel tax reform the effective application of fuel tax will be limited to:

- business use of fuel in on-road applications in motor vehicles with a gross vehicle mass of 4.5 tonnes or less;
- business use on-road in motor vehicles with a gross vehicle mass of more than 4.5 tonnes (with the exception of a carve-out intending to preserve previous entitlements for eligible fuel use in vehicles with a gross vehicle mass of 4.5 tonnes) but only to the extent of the road-user charge;
- for private use on-road in motor vehicles and in certain off-road applications; and
- aviation fuels (where tax is imposed for cost recovery reasons).⁴

Existing schemes of fuel tax relief

2.7 The Energy Grants (Credits) Scheme (EGCS) was introduced to help reduce the costs for businesses who use diesel and alternative fuels. To be eligible to claim a grant under the scheme businesses must undertake an eligible activity using an eligible fuel.

2.8 The Fuel Sales Grants Scheme is a grant to fuel retailers for the sale of petrol and diesel to consumers in regional and remote areas where fuel prices are generally higher.

2.9 The *States Grants (Petroleum Products) Act 1965* gives financial assistance to users of petroleum-based fuels in designated remote regional and rural locations in Australia who would otherwise have to pay higher prices for fuels due to the additional costs in transport and distributing fuel to those locations.⁵

Changes to the existing system

2.10 The entitlement to an energy grant for diesel under the EGCS will only apply to fuel purchased or imported before 1 July 2006. Fuel purchased after this time will be subject to excise which businesses can claim back through their Business Activity Statements (BAS).

3 Explanatory Memorandum, p. 69.

4 Explanatory Memorandum, p. 7.

5 Explanatory Memorandum, p. 70.

2.11 Similarly, the entitlement to a fuel sales grant under the Fuel Sales Grants Scheme will only apply to fuel sales before 1 July 2006.

2.12 The States and Territories administered Petroleum Products Freight Subsidy Scheme will cease to apply to fuel sales and deliveries of petroleum products after 30 June 2006.

2.13 The *States Grants (Petroleum Products) Act 1965* will be repealed on 1 July 2007, thereby allowing outstanding claims to be made until 30 June 2007.

Excise payable on fuel used other than in an internal combustion engine

2.14 The Explanatory Memorandum explains:

All fuels acquired or manufactured in, or imported into, Australia for use other than in an internal combustion engine will be effectively fuel tax-free from 1 July 2006. Use of fuel other than in an internal combustion engine includes:

- fuel used in burner applications such as heating (use as a fuel);
- diesel fuel used in the manufacture of explosives, in the calcination process for the production of alumina and as a flocculent in coal washeries; and
- non-fuel uses such as use as a solvent or in the manufacture of products such as paint and certain solvents, cleaning agents and the like.⁶

2.15 Under the fuel tax credit system, fuel tax will apply to all petroleum products suitable for use in an internal combustion engine. Effective fuel tax-free treatment for products which will be used other than in an internal combustion engine will be delivered by a fuel tax credit to either the user of the fuel, or at another point in the supply chain, depending on whether the use is business or private.⁷

2.16 For example, when a petroleum product is used as an ingredient in the manufacture of another product that cannot be used as a fuel in an internal combustion engine, for example paint and certain solvents, printing inks, cleaning agents, adhesives and the like, the manufacturer can claim a fuel tax credit on the petroleum component.⁸

2.17 The direct result of this change is that some users of fuel products who were not required to pay excise on their purchase of petroleum products will now be required to pay excise up front and then claim it back through their BAS.

6 Explanatory Memorandum, p. 3.

7 Explanatory Memorandum, p. 12.

8 Explanatory Memorandum, p. 12.

Alternative fuels

2.18 Alternative fuels which are currently excise free (liquefied petroleum gas, compressed natural gas and liquefied natural gas) or effectively so, (biodiesel and ethanol) will lose their excise-free status, and will be subject to excise from 1 July 2011.⁹ The Explanatory Memorandum explains:

Fuel tax will be applied to currently untaxed fuels from 1 July 2011. Effective fuel tax on these fuels will phase in over five equal annual steps commencing on 1 July 2011 and ending on 1 July 2015. The final fuel tax rate applying to these fuels will incorporate a 50 per cent discount on the energy content fuel tax rates that would otherwise apply.¹⁰

2.19 The Explanatory Memorandum sets out the effective fuel tax rates applicable to alternative fuels during the period from 1 July 2011 to 1 July 2015.¹¹

<i>Fuel type</i>	<i>1 July 2011</i>	<i>1 July 2012</i>	<i>1 July 2013</i>	<i>1 July 2014</i>	<i>1 July 2015</i>
Biodiesel (cents per litre)	3.8	7.6	11.4	15.3	19.1
Ethanol (cents per litre)	2.5	5.0	7.5	10.0	12.5
Methanol (cents per litre)	1.7	3.4	5.1	6.8	8.5
Liquefied petroleum gas (cents per litre)	2.5	5.0	7.5	10.0	12.5
Liquefied natural gas (cents per litre)	2.5	5.0	7.5	10.0	12.5
Compressed natural gas (cents per m ³)	3.8	7.6	11.4	15.2	19.0

9 Bills Digest , No. 117, 4 May 2006, p. 5.

10 Explanatory Memorandum, p. 8.

11 Reproduced from Explanatory Memorandum, p. 14.

Membership of the Greenhouse Challenge Plus Programme

2.20 Under the fuel tax credit system, businesses that claim over \$3 million each year in fuel tax credits are required to be a member of the Greenhouse Challenge Plus Program. Members of this program are required to measure their greenhouse gas emissions, develop action plans for greenhouse gas abatement and report to the Government on their actions.¹²

12 Explanatory Memorandum, p. 19.

CHAPTER 3

ISSUES

Overview

3.1 Overall, these Bills represent a positive move to simplify what has become a complex system of levying taxation on fuels. The Bills will, if passed, bring positive benefits to many industry sectors that are currently subject to fuel excise, and for the most part, the Committee supports the reform initiatives that the Bills contain.

3.2 A clear intent of the Bills is to reduce fuel taxation on many of Australia's wealth-producing industries, which should assist them to become more internationally competitive. As the Explanatory Memorandum for the Bills points out, businesses involved in manufacturing, quarrying and construction will become entitled to fuel tax relief. Primary production, mining and commercial power generation will also become entitled to fuel tax relief.¹

3.3 However, there are a number of issues arising in the Bills that on the basis of the evidence received, appear to be anomalous, and which require clear resolution before the Bill is enacted. The Committee cautions that the time allowed for its inquiry was unduly short. It has therefore been difficult to determine whether the issues the Committee raises in the following sections are unintended consequences, the result of misunderstandings about how the legislation will work on the part of fuel users and manufacturers, or deliberate policy decisions. The major issues of concern that were raised during the Committee's inquiry were as follows:

- the effects on cash flow and working capital arising from the requirement to remit fuel tax in relation to fuel tax exempt activities, particularly on manufacturers who use hydrocarbons in the production process, not as fuel;
- the effects of the reforms on oil recyclers; and
- the effects of the reforms on the future of the biofuels industry.

3.4 The Committee also examined several secondary issues which were raised in evidence, including:

- the effects of the abolition of the Fuel Sales Grants scheme on fuel prices for motorists in remote areas; and
- requirements to participate in the Greenhouse Challenge Program.

1 Explanatory Memorandum (EM), p. 3.

The effects on cash flow and working capital

3.5 These Bills introduce a single system of fuel tax credits, replacing the current Energy Grants (Credits) Scheme, Fuel Sales Grant Scheme and the States-administered Petroleum Products Freight Subsidy Scheme. The Committee has received submissions and evidence claiming that the new fuel tax credit system will impact on businesses as follows:

- some businesses previously not required to will now be required to pay excise up-front;
- the delay between paying for excise and claiming it back through Business Activity Statements (BAS) will have a detrimental effect on business cash flows, and require some businesses to have a higher level of working capital; and
- the cost of compliance will increase for some businesses.

Paying excise upfront

3.6 Under the existing system, the majority of businesses pay excise up-front and then claim it back.² However some businesses, and in particular those which use hydrocarbons for non-fuel manufacturing processes, such as solvent and paint manufacturers, are exempt from paying excise on their fuel purchases. Remission, refund and rebate provisions exist in the *Excise Act 1901* and the *Customs Act 1901*. The Explanatory Memorandum explains:

A remission is a mechanism that allows holders of a remission certificate to obtain prescribed fuel products fuel tax-free for use in prescribed circumstances. Remission and refunds commonly relate to solvent and burner fuel applications, kerosene for some specific fuel uses, and diesel and petrol substitutes for non-fuel users.³

3.7 The Explanatory Memorandum states:

Concessions, refunds and remissions currently delivered through the excise and customs system for the use of fuel other than fuel in an internal combustion engine, will be replaced by fuel tax credits.⁴

3.8 The use of potential fuels for non-fuel purposes in industries such as paint manufacture will continue to be fuel tax free, but the way in which this will be achieved will change. Such businesses will be required to remit fuel tax but will be able to claim it back through the BAS system, as described below.

3.9 Mr Michael Hambrook, Executive Director of the Australian Paint Manufacturers' Federation Inc (APMF) was among several who raised concerns that it

2 *Proof Committee Hansard*, 5 June 2006, p. 76. (Mr Colmer)

3 EM, p. 10.

4 EM, p. 3

will soon be necessary to pay excise on solvents used in the manufacture of paints, whereas:

There is currently no excise duty payable on those solvents because, as I said, they are turned into cans of paint....⁵

3.10 Manufacturers of paint and other solvent based products argue that this will increase their production costs, which they maintain they can ill afford to absorb.

3.11 The APMF submission encapsulated the views of many, telling the Committee that the industry is not in a position to absorb increased production costs:

The industry is now several years into a cycle of rising costs and falling sales. The price of solvents and tin plate has more than doubled in the past year. Sales have declined for 3 years in a row while the 2005 total production figure of 213 million litres is less than the 224 million litres produced in 1994. Against this background imports are rising steadily with 2005 figures up 7% over 2004. If this proposal goes through, Australian paint manufacturers will suffer:

- a significant cash flow disadvantage
- a significant increase in record keeping and accounting processes
- a loss of competitive advantage over imported paint which will not be affected by this legislation.⁶

3.12 Mr Hambrook, reinforced the point that the changes represented an impost the industry could ill afford:

The point I simply make there is that this is not a rich and affluent industry, so when additional costs get lobbed onto the industry, particularly the small to medium sized businesses, that is really going to hurt them. These are the guys who until now have not had this as a worry on their books at all. But now they are doing their quarterly BAS, they have to churn out the money to pay for the solvent within a few days of receiving the solvent, and they will not get it back for two or three months.⁷

3.13 The Committee questioned Treasury officers about why the fuel tax credit system would require businesses such as paint manufacturing companies to now pay fuel excise upfront rather than through the existing remission, refund and rebate system. Mr Tony Free, Manager, Excise Unit, Indirect Tax Division of Treasury said that, under the fuel tax credit scheme, as long as a fuel product is used it will be excisable:

5 *Proof Committee Hansard*, 5 June 2006, p. 16.

6 Australian Paint Manufacturers Federation, *Submission 2*, pp. 1-2.

7 *Proof Committee Hansard*, 5 June 2006, p. E16.

They have taken a product that is fuel, that has fuel tax applied to it and that is in many cases an actual ingredient of fuel—in some cases, such as kerosene, it is directly fuel. So the opportunity has been taken to align them with the fuel tax credits system as is the case for all users of fuel.⁸

Claiming excise through Business Activity Statements

3.14 Submissions raised concerns that the introduction of the fuel tax credit system will have a significant impact on the cash flow of businesses. The Explanatory Memorandum states that the fuel tax credit will be claimed by business entities on their Business Activity Statement (BAS) and will be offset against an entity's other tax liabilities⁹.

3.15 The seller of the product includes the cost of excise component in the total price charged to the buyer and remits this to the Australian Taxation Office as is the case currently. Where the product is free of fuel tax, the equivalent of the fuel tax is recovered by the seller when it claims a fuel tax credit at the time of lodging a BAS.

3.16 The Australian Paint Manufacturers' Federation Inc (APMF) expressed concern about the length of time between paying the fuel excise and claiming it back through the BAS.¹⁰ The Federation estimate that the average length of time that its members will have to carry the tax during the course of the financial year to be 65 days.

3.17 Submissions also expressed concerns about the significant increase in working capital that would be required as a result of the time difference between paying fuel excise and claiming it through the BAS.¹¹ Mr David Pilkington, Industrial Manager, Recochem Inc. noted that:

We currently remit excise weekly and we see that in future or during the transition we would be able to claim that excise back weekly. That is the only way that we would take no impact. Otherwise, we are talking about an

8 *Proof Committee Hansard*, 5 June 2006, p. 80.

9 EM, p. 24

10 Australian Paint Manufacturers' Federation Inc, *Submission 2*, p. 3

11 Australian Paint Manufacturers' Federation Inc, *Submission 2*; Recochem Inc, *Submission 3*; Chemical House Pty Ltd, *Submission 5*; Paints 'n' More Pty Ltd, *Submission 6*; Bituminous Products Pty Ltd, *Submission 8*; Vital Chemicals Pty Ltd, *Submission 9*; Auschem (NSW Pty Ltd), *Submission 10*; TAC Adhesives, *Submission 11*; NSW Farmers' Association, *Submission 14*; GSB Chemical Co Pty Ltd, *Submission 15*; ACCORD Australasia Limited, *Submission 16*; Catalyst Chemicals Pty Ltd, *Submission 17a*; Transpacific Industries Group Ltd, *Submission 20*; AgForce Queensland Industrial Union of Employers, *Submission 22*; Australasian Solvents and Chemicals Company Pty Ltd, *Submission 27*; Australian Oil Recyclers Association Limited, *Submission 30*; The Australian Chamber of Commerce and Industry, *Submission 31*; Plastics and Chemicals Industries Association, *Submission 32*

impact of a substantial sum of money of extra working capital for ourselves in the region of \$700,000.¹²

3.18 The National Farmers' Federation (NFF) also expressed concerns about the impact that claiming through the BAS would have on its members:

These changes have the potential of leaving some farm businesses out of pocket for a considerably longer period than under the current e-Grant or Energy Credits Grants Scheme claiming arrangements, resulting in real costs for Australian Farm businesses.¹³

3.19 The Australian Trucking Association (ATA) expressed similar concerns:

The ATA has been advised by members the new restriction of only being able to claim excise credits through the BAS will create adverse cash flow consequences for the many small operators who lodge their BAS statements only every three months or even longer.

The ATA believes the extra cost involved and the administrative burden placed upon small business to lodge their BAS statements monthly simply to claim the fuel grant is problematic. What will result is a slowdown of cash flow that will affect the viability of operators.¹⁴

Transition period announced by the Minister

3.20 The Minister for Revenue and Assistant Treasurer, the Hon. Peter Dutton MP, announced on 1 June 2006 that a two year transition period will be introduced to assist businesses in the move to claiming fuel tax credits through the Business Activity Statement.¹⁵ The Minister said:

Following discussions with the National Farmers Federation, the Australian Trucking Association and fishing and paint manufacturing industries, the Government has proposed a two year transition measure to help claimants of fuel tax credits get in tune with the new system.

...This two year transitional period will allow businesses to align their practices to the new arrangements so that by 1 July 2008 all fuel users who make claims will be aware of how the new system works and come on board.¹⁶

12 *Proof Committee Hansard*, 5 June 2006, p. 13.

13 National Farmers' Federation, *Submission 18*.

14 Australian Trucking Association, *Submission 19*.

15 Minister for Revenue and the Assistant Treasurer, The Hon. Peter Dutton, MP, *Press Release* No. 034, 1 June 2006.

16 Minister for Revenue and the Assistant Treasurer, The Hon. Peter Dutton, MP, *Press Release* No. 034, 1 June 2006.

3.21 Mr Pilkington argued that while the transitional arrangements announced by the Minister for Revenue and Assistant Treasurer are a good start, it is necessary to ensure that cash flow problems would not occur again beyond the transitional period.¹⁷

3.22 The Australian Chamber of Commerce and Industry (ACCI) expressed similar concerns:

I am not convinced that two years is going to make everything fine. With the inclusion of the two-year transitional period, these businesses will still have to pay for fuel with excise; they will have to pay 38c a litre more for fuel and they will have to claim it back through a separate process. So both their cash flow and compliance costs will go up, but not by as much as they will at the end of the two-year period. So it is better than nothing, but I do not think is a vast improvement.¹⁸

3.23 The NFF expressed its concern about a lack of flexibility for claiming fuel credits.¹⁹ Mr Ben Fargher, Chief Executive Officer, NFF told the Committee that while the NFF supports the Bills, its membership has raised concerns in relation to the eGrant system.²⁰ The Committee notes that the ability to claim excise through the eGrant system will be retained during the two year transition period announced by the Minister for Revenue and the Assistant Treasurer²¹.

3.24 The Committee also notes that Mr Colmer of the Treasury provided evidence that the eGrant system is not widely used:

I must say that some of the claims seem a little overstated to us. We are aware, for example, that very few farmers use eGrant and very few farmers claim particularly frequently under the existing scheme. Some of the cases that are put up for the cash flow argument have been chosen to maximise the impact and they are not necessarily representative of the reality of the situation as far as we can see.²²

3.25 Further evidence provided by the Treasury indicates that at present only 312 agricultural claimants currently use the eGrant system.²³

3.26 Mr Colmer of the Treasury told the Committee that the majority of people under the existing system pay the excise up front and then claim it back under a

17 *Proof Committee Hansard*, 5 June 2006, p. 13.

18 *Proof Committee Hansard*, 5 June 2006, p. 72. (Mr Potter)

19 National Farmers' Federation, *Submission 18*.

20 *Proof Committee Hansard*, 5 June 2006, p. 61.

21 Minister for Revenue and the Assistant Treasurer, The Hon Peter Dutton, MP, *Press Release No. 034*, 1 June 2006.

22 *Proof Committee Hansard*, 5 June 2006, p. 76.

23 Treasury, *Additional Information*.

specific, separate process²⁴. Further, the cash flow of 19.44% of clients could be affected by claiming excise through their Business Activity Statements, but that the majority, 80.56% of clients would not be affected.²⁵

3.27 The Committee welcomes the announcement of the two year transition period and considers that it will substantially relieve the concerns raised by the witnesses.

Compliance costs

3.28 The Explanatory Memorandum states:

The fuel tax credit system will lower compliance costs, reduce tax on business and remove the burden of fuel tax from thousands of individual businesses and households.²⁶

3.29 The Australian Chamber of Commerce and Industry (ACCI) expressed concern that the Bills will increase compliance costs for those businesses who will have to pay excise for the first time:

They will need to keep much more detailed records of fuel purchases, implement new accounting procedures to claim the excise back and ensure that claims are included in BAS returns.²⁷

3.30 The ACCI suggests that the continuation of the eGrant system will reduce both compliance and cash flow costs.²⁸ The level of use of the eGrant system by businesses is discussed above.

Committee's views

3.31 The Committee is of the view that the two-year transition period announced by the Minister for Revenue and Assistant Treasurer will allow most businesses adequate time to arrange their affairs to align with the new system.

3.32 The Committee continues to hold some concerns however about the impact in the longer term of the legislation on those manufacturers who currently pay no excise because their use of hydrocarbons is excise exempt. For them, the introduction of the Fuel Tax legislation will entail some extra costs.

24 *Proof Committee Hansard*, 5 June 2006, p. 76.

25 *Proof Committee Hansard*, 5 June 2006, p. 77.

26 EM, p. 5.

27 The Australian Chamber of Commerce and Industry, *Submission 31*, p. 3.

28 *Proof Committee Hansard*, 5 June 2006, p. 69.

Recommendation

3.33 The Committee recommends that during the transition period announced by the Minister, the Government re-examine the effects of the legislation on manufacturers who use hydrocarbons for non-fuel manufacturing processes, with a view to minimising and offsetting any adverse effects.

Effects of the reform package on oil recyclers

3.34 The Committee received submissions and evidence from a number of oil recycling companies who expressed concern about the effect the Bills would have on their businesses.

3.35 A range of companies in this industry collect and process more than 200 million litres of used oil (including sump oil from engines and transmissions, hydraulic oil, and a wide range of other industrial oils) annually. This however does not represent the full amount of oil that could be recycled. As noted on the Government's Product Stewardship for Oil website:

...between 60 and 100 million litres remains unaccounted for.

We don't know what happens to this 'missing oil'. However, anecdotal evidence suggests it could be:

- Sitting in temporary stockpiles (eg in the garage or shed);
- Retained in waste or scrap equipment (such as vehicles);
- Lost to the environment at collection points (eg leaking, spills etc).
- Put out for household rubbish collection; or
- Illegally dumped (in parks and reserves or in waterways, sewer systems and stormwater drains).²⁹

3.36 Recyclers may clean up the oil through a variety of methods ranging from dewatering and filtration, through to distillation in more sophisticated operations. The product is generally sold as a burner fuel in applications such as firing brick or timber drying kilns, heating poultry sheds etc.

3.37 The salvage and re-use of waste oil has significant environmental benefits, as at least a proportion of this oil, which may be high in sulphur and contaminated with heavy metals, may otherwise be dumped, or stored inadequately, leading to contamination of soils and water supplies.

3.38 There are a range of incentives provided to oil recyclers under the Product Stewardship for Oil program. This program was introduced in 2001 by the Australian

29 From Department of Environment and Heritage website, at <http://www.oilrecycling.gov.au/program/index.html>

Government to provide incentives to increase used oil recycling. The arrangements comprise a levy-benefit system, where a 5.449 cent per litre levy on new oil, funds benefit payments to used oil recyclers. The program is administered by the Department of the Environment and Heritage and aims to encourage the environmentally sustainable management and re-refining of used oil and its re-use.³⁰

3.39 The benefits payable to recyclers are as follow:

Category	Benefit (cents/litre)
1. Re-refined base oil (for use as a lubricant or a hydraulic or transformer oil) that meets the specified criteria	50
2. Other re-refined base-oils (eg chain bar oil, oils incorporated into manufactured products)	10
3. Diesel fuels to which the <i>Excise Tariff Act 1921</i> applies	7
4. Diesel extenders (filtered, de-watered and de-mineralised)	5
5. High grade industrial burning oils (filtered, de-watered and de-mineralised)	5
6. Low grade industrial burning oils (filtered and de-watered)	3
7. Industrial process oils and lubricants, including hydraulic and transformer oils (reprocessed or filtered, but not re-refined)	0
8. Gazetted oil consumed in Australia for a gazetted use	5.449
9. Recycled oil mentioned in item 5 or 6 that has been blended with a petroleum product that meets the criteria mentioned in Schedule 2.	9.557

3.40 Most of the companies in this industry are small to medium sized businesses, with the exception of Transpacific Industries, which is a national company.

3.41 Mr Pullinger of the Australian Oil Recyclers Association (AORA) told the Committee that the proposed changes would threaten the future of the industry:

From a social perspective, the industry employs in excess of 400 people directly in all states of Australia. Nearly all of these people are employed in small- to medium-sized enterprises. They collect used oil in capital cities but, more importantly, in rural, regional and remote areas of Australia.

30 From Department of environment and Heritage Website, at <http://www.oilrecycling.gov.au/program/index.html>

The changes to the Excise Act as currently proposed will severely affect the ability and viability of oil recyclers and collectors to survive in business and to continue and collect trade in used oil. It will also put in jeopardy the government's goal and strategy of taking used oil out of the environment.³¹

3.42 Several aspects of the Bills appear to be of concern to this industry. In common with many of the other groups that made submissions to the inquiry, the major issue appears to be the increased cash flow requirements imposed by the imposition of excise on the supplied product. Also of major concern are expected difficulties in selling the product in competition with alternatives such as gas if the price that must be charged rises. This may make the industry less viable and if the fears of the industry are realised, potentially cause some companies to cease operations.

3.43 Suppliers of the product will in future be required to pay excise of 38.143 cents per litre, although this excise is to be recovered under the proposed fuel tax credits scheme, as burner fuels are to be excise exempt. A significant issue, as for other sectors, is the delay in receiving the money back.

3.44 For some sellers of the product, the requirement to add an excise component will add significantly to the price, at least until the excise is recovered, as the product price in some instances is quite low. Mr Pullinger told the Committee that a recycler will sell a filtered, dewatered product for 16.5 cents per litre including GST, but under the new regime the price increases to 58.5 cents per litre.³² This change may add significantly to cash flow requirements. Mr Grundell of Transpacific Industries told the Committee that:

There are cash flow implications. To give you an idea of the quantum in terms of the Transpacific group, we are currently picking up between 60 and 70 per cent of all the used oil across Australia. Looking at that in isolation, the impost on our business is going to be to the tune of \$800,000 on a weekly basis that we have to fund and find.

...

Also, we are effectively more than doubling our debt levels and exposure to the businesses. In terms of a customer becoming insolvent, what hope, if any, do we have of recovering those funds, given they will already have been expended?³³

3.45 Mr Grundell told the Committee that the increased cost would make it harder to sell the product, calling the viability of the recycling industry into question, as customers could turn to alternative fuels such as coal or gas:

31 *Proof Committee Hansard*, 5 June 2006, p. 20.

32 *Proof Committee Hansard*, 5 June 2006, p. 20.

33 *Proof Committee Hansard*, 5 June 2006, p. 21.

The markets for recovered or alternative fuels are continually under threat and pressure from gas or coal or a combination of both. We are going to find it increasingly difficult to place material, particularly if it is carrying the burden of 38c a litre excise. We want to bring these things to the attention of the Committee and the public in general to ensure that everybody fully understands the ramifications of these changes to the recycling industry.³⁴

3.46 The AORA made a similar point, noting that:

What is worrisome, is that some members have reported the loss of recycled oil sales to customers who will change to burner fuel gas which does not attract excise because they do not want to finance the cost of the \$0.38143 while they wait for a Tax Credit on their BAS.³⁵

3.47 Another confidential submission from a new oil recycling company raised the possibility that buyers of its product would turn instead to using untreated sump oil as a fuel source. This is of some concern, as no contaminants such as heavy metals would be removed prior to use; and the oil itself would not meet any of the required standards for fuel oil such as sulphur content.³⁶

3.48 The same submission said that the proposed changes to the excise regime would have a major impact on the price it would be forced to charge for its product, which it said was defined as 'specified diesel'. The company told the Committee that its product is free from excise and customers receive a rebate of 30.586 cents per litre under the Energy Grants Credit Scheme. As this scheme is being abolished, the base price of the product rises by 30.586 cents. The cost of the product would more than double. As a burner fuel, the product will be subject to a fuel tax credit, but the producer company will nonetheless have to carry the fuel tax cost of 38.143 cents per litre until it can be recovered. The company said that this situation was unsustainable for it in its current R&D and new technology implementation stage.

3.49 Transpacific also raised concerns that it may also have to pay excise on stockpiled material, and possibly have to wait for between six and twelve months to recover the excise paid, imposing a severe impost on the business.³⁷

3.50 The Committee asked Transpacific about the effect of the transitional arrangements announced by the Assistant Treasurer on 1 June 2006. Mr Grundell responded that this would assist the customer, but not the recyclers:

The customer will be able to claim back the excise paid virtually immediately that the material is delivered, and they can then make an adjustment when they do their BAS, be that quarterly or monthly. That is great for the customers, but there is no obligation on them to pay us on our

34 *Proof Committee Hansard*, 5 June 2006, p. 22.

35 AORA, *Submission 30*, p. 2.

36 *Submission 33* – Confidential.

37 *Proof Committee Hansard*, 5 June 2006, p. 22.

invoices for fuel supply any earlier than is currently the case. So it does not really help the recyclers' cash flows.³⁸

3.51 The recyclers also maintain that it is inappropriate to impose excise on their product because this amounts to double taxation, excise already having been paid on the raw material which they re-use.³⁹

3.52 The Committee sought comment from Treasury representatives about the oil recyclers' concerns.

3.53 Treasury representatives told the Committee that oil recycling policy is run through the Environment and Heritage portfolio, and in particular the Product Stewardship Oil Program. The representatives said that this was not an appropriate area for tax policy:

We have been saying all along that it is inappropriate for us as a tax policy area to be involved in that area, and we have been withdrawing and that should not be of any surprise.⁴⁰

3.54 Treasury representatives also said that the issues raised by the oil recyclers 'are ones which we actually think are non-existent'. Treasury said that the initiatives in the Bill have 'no specific impact on recycled oil over and above non-recycled oil'⁴¹ and that 'they [the recyclers] face exactly the same cash flow issues as the conventional competition does'.⁴²

3.55 Treasury advised that currently, burner fuel users who utilize conventional oil such as diesel pay a 7.557 cents per litre excise which recycled oil users do not pay. This subsidy will disappear under the reforms, although the Government has included in the budget a measure that offsets this difference. As a result, in the first year of the scheme, the recyclers will continue to enjoy a 7.557 cents per litre advantage over their conventional competition.⁴³

3.56 Treasury representatives maintained that the oil recyclers had misunderstood what will happen under the reforms:

We have been trying to clarify that their claim that there is going to be a specific impact on them is not correct. It is going to be a more general impact. It is not going to be a specific impact on them as oil recyclers.⁴⁴

38 *Proof Committee Hansard*, 5 June 2006, p. 23.

39 See AORA, *Submission 30*, p. 2.

40 *Proof Committee Hansard*, 5 June 2006, p. 83.

41 *Proof Committee Hansard*, 5 June 2006, p. 83.

42 *Proof Committee Hansard*, 5 June 2006, p. 84.

43 *Proof Committee Hansard*, 5 June 2006, p. 84.

44 *Proof Committee Hansard*, 5 June 2006, p. 85.

3.57 Questioned by Committee members about whether the recyclers' businesses would suffer as a result of the reforms, Treasury representatives maintained that 'we do not believe that there is going to be an impact that cannot and will not be managed'...'I do not believe that there is any reason why the recyclers are going to disappear'.⁴⁵

3.58 The Committee expresses its concern about the potential impact of these changes on the recycling industry. In the first instance, the Committee considers that there are environmental benefits associated with providing appropriate incentives to encourage such an industry, and it is in the public interest that it be maintained. However, the industry may be less viable if the product is rendered unattractive to buyers because of tax changes increasing the price that producers must charge.

3.59 There is a clear disparity between the evidence and assurances provided by Treasury and the statements made by representatives of the industry. Treasury representatives state that the industry is not threatened and that the concerns expressed are misplaced. This view contrasts markedly with the views of AORA and companies who are affected by the proposed changes, who maintain that the industry is under severe threat. Furthermore, the Committee found the Treasury witnesses to be strikingly unhelpful in addressing the issues raised in the hearings.

3.60 The Committee also observes that the imposition of a 38 cents per litre excise on a low value product appears disproportionate. While it is true that the recyclers' competitors (the major oil companies and gas companies) face similar charges, the value of the product they sell is higher, and their financial strength as large multinational companies must inevitably mean that they are in a much better position to absorb the costs associated with carrying the fuel tax costs than the much smaller recycling companies. Given that the policy intent is that burner fuels in this market are to be free of excise, it is questionable whether either buyers or sellers should have to advance considerable amounts of money in excise that is destined to be fully rebated, as there are inevitably costs and risks associated with carrying this debt, even for a short period.

3.61 The short timeframe allocated by the Senate for this inquiry has not allowed the Committee to resolve the above issues to its satisfaction. If Treasury's assessments are incorrect (and the industry clearly believes that they are), then significant damage may be done to the industry, and a number of companies may be forced to cease trading. The possibility that waste oil will be dumped into landfill or disposed of by other environmentally damaging practices because there is no ready way of disposing of it and no market for it also cannot be discounted on the evidence currently available to the Committee.

3.62 The Committee does not share Treasury's view that it is necessarily inappropriate for tax policy to be involved in the oil recycling area. There are a number of other areas where tax policy has a clear role to play in influencing policy

45 *Proof Committee Hansard*, 5 June 2006, p. 85.

outcomes, for example in relation to alcohol excise. While the Product Stewardship Oil Program is undoubtedly a significant contributor to encouraging oil recycling, the benefits it pays for the production of burner fuels are not large, and the incentives provided by the existing excise arrangements, however fragmented, unquestioningly play a significant role in determining the attractiveness of the product in the marketplace.

3.63 The Committee therefore considers that in the circumstances, it has no option but to recommend the following in relation to the oil recycling industry.

3.64 The Committee recommends that:

- **the Bills be amended to exempt oil recycling companies from the operation of the legislation;**
- **the Government implement an urgent review of the effectiveness of the Product Stewardship for Oil Program, with a particular focus on whether the program will continue to be effective in meeting its objectives following the abolition of the energy grants credits scheme and the implementation of the fuel tax credits system; and**
- **the Minister for the Environment and Heritage initiate a review of disposal requirements applying to used oil, and in particular whether more stringent standards on the use of this material as a burner fuel are appropriate.**

Effects on the biofuels industry

Introduction

3.65 This reform package contains provisions that may have some impact on the development of a biodiesel industry in Australia. Biodiesel is currently exempt from excise. Taxation of this fuel is to be phased in, commencing on 1 July 2011.

3.66 The rate applicable to biodiesel will be 3.8 cents per litre in 2011, rising to 19.1 cents per litre in 2015.

3.67 Grants are currently available for alternative fuels under the Energy Grants Credits Scheme. These grants are to be gradually phased out between 2006 and 1 July 2010, when they fall to zero. The rates applicable to biodiesel as at 1 July 2006 will be 14.808 cents per litre.⁴⁶

46 From EM, pp. 15-16.

3.68 A number of aspects of these Bills have caused concern within the biofuels industry. Renewable Fuels Australia summed up the views of a number of submissions, claiming that there had been a lack of policy co-ordination and consistency which has hindered the growth of the biofuels industry:

The Biofuels Taskforce, for example, represents the development of positive policies for new ethanol and biodiesel industry growth, while Fuel Tax Bill 2006 represents a clear example of impediments being put in place that will undermine the achievement of those policy objectives.⁴⁷

Biodiesel

3.69 The key issue for the biodiesel industry in this legislation appears to be that the payment of a producer grant under the *Energy Grants (Cleaner Fuels Scheme) Act 2004* is taken to have extinguished the fuel tax liability. This means that the purchaser of biodiesel whose producer has received a grant cannot claim a fuel tax credit.

3.70 This situation arises as a result of Subclause 43-5(2) of the Bill, which reads as follows:

(2) The amount of ***effective fuel tax*** that is payable on the fuel is the amount (but not below nil) worked out using the following formula:

Fuel tax amount - Grant or subsidy amount

3.71 The Explanatory Memorandum explains the reasoning behind this provision:

Fuel tax credits are based on the effective fuel tax payable

2.66 The amount of any fuel tax credit payable on fuel is based on the amount of effective fuel tax that is payable on the fuel [subsection 43-5(1)]. The reason for this is that some fuels, for example domestically-produced ethanol and biodiesel, pay fuel tax at the same rate as diesel and petrol, but the amount of fuel tax effectively payable is reduced by a grant under the *Energy Grants (Cleaner Fuels) Scheme Act 2004* or a subsidy paid by the Department of Industry, Tourism and Resources.

...

2.68 The intention, therefore, is that the fuel tax credit is based on the effective fuel tax payable rather than the amount of fuel tax payable on the importation or manufacture of the fuel. For example, biodiesel is currently taxed at 38.143 cents per litre and producers receive a cleaner fuel grant equivalent to the tax on the fuel, making the effective fuel tax zero. As no

47 Renewable Fuels Australia, *Submission 25*, p. 2.

effective fuel tax has been paid, there is no entitlement to a fuel tax credit for the use of the fuel.⁴⁸

3.72 Several biofuels producers and the the Biodiesel Association of Australia maintain that this change places the biodiesel industry at a competitive disadvantage to conventional diesel fuel.

3.73 The following exchange between the Committee's chair and Mr Humphreys of the Australian Biodiesel group illustrates the nature of the problem as perceived by the industry:

CHAIR—But under the new system you would then have to add the cost of the excise to the cost to your customers. Is that right?

Dr Humphreys—No. Under the new system, the operative term is 'net tax paid'. And they view the biodiesel grant as an extinguishment of the excise that should have been paid on biodiesel. That is the dislocation problem. The biodiesel producer grant was supposed to allow the stimulus of the industry and to allow producers like ourselves to come into the market and form an industry from nothing. That has obviously been very effective, going by the number of biodiesel plants that are now proposed. I, as Adrian [Mr Adrian Lake] said, am the CEO of the largest biodiesel producer in Australia today. We came into the market because of our perception of the intent of the producer grant. It is the intent that is being distorted.

CHAIR—I am not so much concerned about the intent as the effect.

Dr Humphreys—It is the effect that is being destroyed. ... As of 1 July... they can no longer claim any excise back on the biodiesel, because it is viewed as net tax zero, because the law, as of 1 July, takes the view that biodiesel has not paid any effective tax.

CHAIR—I see: it is because of the producer grant.

Dr Humphreys—The producer grant is not being looked at as a producer grant; it is being looked at as an excise offset; hence there is no net tax being paid... hence the farmer can no longer claim tax back. So in one fell swoop it completely closes the door to the biodiesel industry for off-road activity.⁴⁹

3.74 Representatives of the biodiesel industry maintain that if this issue is not addressed, future plans for expansion of the biodiesel industry will be shelved. Mr Lake of the Biodiesel Association of Australia told the Committee that:

...if the bill goes ahead as planned, we will go from nearly a billion litres of biodiesel per annum to a situation within the next two to three years where

48 EM, p. 38.

49 *Proof Committee Hansard*, 5 June 2006, p. 33-4.

we will be lucky to keep the couple of hundred million litres that are coming online now.⁵⁰

3.75 The Biodiesel Association argued that the effect of the buyer of biodiesel not being able to claim back the fuel tax component is that biodiesel will go from having a slight price advantage over conventional diesel to having a disadvantage. The Association recirculated a table at the public hearing which illustrated how the relative price structures would change. This table is included at Appendix 3.

3.76 Renewable Fuels Australia made a similar point in evidence. Mr Hill told the Committee:

This has got to do with the phase-out of the Energy Grants Credits Scheme, which is proposed to start on 1 July. ANZ in this instance are supposing that the terminal gate price of diesel and biodiesel are each \$1. As of 1 July, the eligible user of a vehicle over 4.5 tonnes conducting business will be able to claim 18.1c per litre for regular diesel and, in the year 2006-07, will only be able to claim 14c for biodiesel and, in the subsequent year, 11c. Therefore, in simple terms, the cost for the end user will be 81c for diesel and 85c for biodiesel in the year 2006-07.⁵¹

3.77 To address this issue, the Biodiesel Association of Australia put forward the following proposal:

We want the producer grant to be treated as a producer grant so that, when the excise liable on the production of biodiesel is paid, it can effectively come from the producer grant or from the producer but will be accounted for separately. That way, under the current regime and the proposed changes with legislation, it would have an effective excise of 38c. The advantage of taking this approach is that there is already a sunset clause and a final rate of excise of 19c in 2015, so it requires no modification to any of the legislation, to any other bills—to the intent of the current legislation.⁵²

3.78 The Committee sought information from Treasury representatives about these claims. Mr Colmer told the Committee that the cleaner fuels scheme was never intended to be a stimulus package for the biodiesel industry, and quoted from a letter dated 15 June 2005 written by the former Assistant Treasurer, the Hon. Mal Brough MP, to Dr Humphreys of the Australian Biodiesel Group:

The cleaner fuels grant was not intended as a stimulus package for the biodiesel industry.

3.79 Mr Colmer also quoted from the Explanatory Memorandum for the Energy Grants (Cleaner Fuels) Scheme Bill 2004, maintaining that there was nothing in that package that was to be a stimulus for the biodiesel industry:

50 *Proof Committee Hansard*, 5 June 2006, p. 32-3.

51 *Proof Committee Hansard*, 5 June 2006, p. 46-7.

52 *Proof Committee Hansard*, 5 June 2006, p. 32.

The grant will offset the excise and customs duty payable on biodiesel from 18 September 2003 and continue the current effective excise rate of zero for 100% biodiesel until 30 June 2008. The grant will also be payable on fuel blends containing biodiesel, extending an effective excise rate of zero to the biodiesel component of fuels blends for the same period.⁵³

3.80 The Committee considers that while there may not have been any explicit statement in the Explanatory Memorandum for that Act that this was the intention, it is clear that the encouragement of this industry has been widely interpreted as part of the reason for introducing that Act. The Australian Taxation Office also appears to have arrived at this view. For example, its currently published information about the Cleaner Fuels Grants Scheme states:

The scheme is designed to encourage the **manufacture** [emphasis added] and importation of fuels that have a reduced impact on the environment. Currently, biodiesel that meets the biodiesel fuel standard and premium unleaded petrol...are eligible cleaner fuels.⁵⁴

3.81 The clauses of the Energy Grants (Cleaner Fuels) Scheme Act also give weight to the interpretation that it was intended to encourage the manufacture of clean fuels such as biodiesel.

3.82 The objects clause of the Act reads as follows:

2A Object

The object of this Act is to establish a scheme for the provision of grants such as the following:

(a) grants to fully offset any excise duty or customs duty payable in relation to the manufacture or importation of biodiesel for which a provisional entitlement arises during the period starting on 18 September 2003 and ending on 30 June 2011;

(b) grants to partially offset any excise duty or customs duty payable in relation to the manufacture or importation of biodiesel, CNG, ethanol, LNG, LPG or methanol for which a provisional entitlement arises during a transition period starting on 1 July 2011 and ending on 30 June 2015;

(c) grants to encourage the manufacture and importation of low sulphur fuels.

3.83 Section 5 sets out the conditions under which a person or company may become entitled to a grant under the Act:

5 Becoming provisionally entitled to a cleaner fuel grant

- (1) You are provisionally entitled to a cleaner fuel grant for a quantity of fuel if:
(a) the fuel is:

53 EM, Energy Grants (Cleaner Fuels) Scheme Bill 2004.

54 From ATO website, www.ato.gov.au/content/downloads/n9886-12-2005final.pdf, as downloaded on 10 June 2006.

- (i) imported into Australia; or
 - (ii) manufactured in Australia;
- on or after the fuel's start day; and
- (b) one of the following subparagraphs applies to you:
- (i) you imported the fuel into Australia;
 - (ii) you manufactured the fuel in Australia;
 - (iii) you bought the fuel from such an importer or manufacturer;
 - (iv) you bought the fuel from a licensed person for the fuel;
 - (v) you arranged for the fuel to be manufactured in Australia on your behalf; and

3.84 The Committee repeats its observation that, on this issue, Treasury witnesses were strikingly unhelpful, being evidently either unable to answer important questions which had been raised by Senators and witnesses, or unwilling to do so. At the end of the day, the Committee was left with clear and emphatic evidence from industry participants that, were the Fuel Tax Bill 2006 to apply to the biodiesel industry, it would have the effect of depriving the industry of the benefits of fuel tax credits. The perception of the industry is that this would be, in effect, to reverse the policy of the Government. Whether that was an unintended likely consequence the Committee cannot say, having regard to the opaque and unresponsive nature of the evidence of departmental witnesses. In the absence of clear evidence to the contrary, the Committee has no choice but to take at face value the assessments of industry witnesses as to the likely devastating consequences for the industry were the Bills to apply to them.

3.85 While it is apparent from the provisions of the Energy Grants (Cleaner Fuels) Scheme Act that the intention is to encourage the use of the fuel, it is also a reasonable interpretation that manufacture in Australia is also encouraged. The Committee therefore remains of the view expressed by the Chair at the public hearing that it was reasonable to interpret the package as a stimulus.

3.86 It is important to note that the rate at which the grant was paid was designed to be a 100 per cent offset against the excise that would otherwise have been paid until 30 June 2011. The effect of the grant was to give biodiesel a competitive price advantage over conventional diesel.

3.87 The effect of the proposed Bill does appear to be in accordance with the scenario described by the Biodiesel Association, that is, the inability of the buyer of biodiesel to claim a fuel tax offset that would be available if the buyer bought conventional diesel. It remains to be seen whether the effects of reducing this advantage will have as deleterious an effect as that forecast by the industry.

3.88 The Committee has examined aspects of the taxation of renewable fuels before in its 2003 consideration of the Energy Grants (Cleaner Fuels) Scheme Bill 2003 and the Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments)

Bill 2003.⁵⁵ In that inquiry, it became clear that in the 2003-04 Budget, there had been a shift in policy in relation to the cleaner fuels industry. As the Committee observed in that report, the Government indicated that it was moving to adopt tax neutral treatment of competing fuels after 1 July 2011 in order to remove taxation distortions that currently exist in the fuel market.

3.89 The stated objective at that time was that:

The Government will reform the fuel excise system to promote long-term sustainability and move to a neutral tax treatment between competing fuels.⁵⁶

3.90 The Budget papers went on to say that:

Reforms will also support the production of cleaner fuels and provide a more certain framework for investment in the fuels sector.

3.91 The difficulties faced by the industry appear to be a product of the interaction between the Energy Grants (Cleaner Fuels) Scheme legislation and the policy intent in the Government's Energy White Paper. As Mr Harms of Treasury summed up:

I think the issue is the interaction of the outcome of that legislation—which is to make biodiesel excise free—with the government's policies announced in the energy white paper, which were essentially to remove the tax on business inputs. So where you are trying to sell a tax-free product into a marketplace that pays no tax, that tax-free product does not have any competitive advantage by virtue of its privileged tax treatment.⁵⁷

Committee's views

3.92 On the face of the available evidence, and in the absence of sufficient time to pursue this matter to a resolution, the Committee can only conclude that the shift to competitive neutrality has been brought forward, apparently unintentionally.

3.93 The Committee notes that the Government has encouraged the development of the biodiesel industry through a number of initiatives. However, if the industry is deprived of a market because buyers of the product are unable to claim a fuel tax credit, fuel tax liability having been extinguished by a grant under the *Energy Grants (Cleaner Fuels) Scheme Act 2004* or a subsidy paid by the Department of Industry, Tourism and Resources, then the Government's other initiatives to develop the industry and encourage the use of this alternative fuel may well be futile.

55 Senate Economics Legislation Committee, Report, Provisions of the Energy Grants (Cleaner Fuels) Scheme Bill 2003 and the Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Bill 2003, October 2003.

56 Budget Papers 2003-04, Part 1, p. 1-22.

57 *Proof Committee Hansard*, 5 June 2006, p. 89.

Recommendation

3.94 The Committee recommends that the Government reconsider whether Subclause 43-5(2) of the Bill is fully consistent with the Government's other policies in relation to encouraging the development of a biodiesel industry and if appropriate, exempt the industry from its operation in the meantime.

Fuel Sales Grants Scheme

3.95 Schedule 1 of the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 amends the *Fuel Sales Grants Act 2000* so that a fuel sales grant (under the Fuel Sales Grants Scheme) applies only to fuel sales before 1 July 2006.

3.96 The *Fuel Sales Grants Act 2000* will be repealed on 1 January 2007, allowing outstanding claims to be made until 31 December 2006.⁵⁸

3.97 The Fuel Sales Grants Scheme (FSGS) was introduced on 1 July 2000 to ensure that the gap between city and country fuel prices, known as the fuel price differential, 'need not increase' following the introduction of the GST.

3.98 Currently, it provides a grant to fuel retailers for the sale of petrol and diesel to consumers in non-metropolitan and remote areas where fuel prices are generally higher. The grant is one cent per litre for the non-metropolitan zone and two cents per litre for the remote zone. These zones were defined using an independent index called the Accessibility/Remoteness Index of Australia (ARIA).

3.99 Fuel retailers are expected to pass on the full effect of the grant to consumers.⁵⁹

3.100 The estimated cost of the FSGS between 1 July 2000 and 30 June 2004 was \$850 million.⁶⁰

3.101 The Fuel Taxation Inquiry in 2002 concluded that it was difficult to identify the benefits of the scheme to regional consumers and that significant boundary anomalies were encountered under the scheme. It recommended that the FSGS be terminated from 1 July 2004.

58 EM, p. 73.

59 Australian Taxation Office, 'Fuel Sales Grants Scheme – An overview of the scheme', available at <http://www.ato.gov.au/businesses/content.asp?doc=/content/14396.htm>

60 Richard Webb, 'Road Funding Changes', Parliamentary Library Research Note No. 45 2003–04, 8 March 2004, p. 2.

3.102 The Inquiry reported that it had received considerable criticism of the scheme and comparatively little support of it. Overall the scheme appeared to have had little noticeable impact. It was not clear that any benefits accruing to regional Australians were proportional to the level of expenditure nor that this program was the best use of the funding.⁶¹

3.103 On 22 January 2004, the Government announced its decision to wind up the Fuel Sales Grants Scheme from 1 July 2006. The savings from the FSGS (\$265 million in the first year; \$270 million in the second year and \$275 million in the third year) will be redirected to fund improvements in transport infrastructure in outer metropolitan, rural and remote areas, under AusLink.⁶²

3.104 The Committee received submissions and evidence from the Royal Automobile Association of Queensland (RACQ) and the Australian Trucking Association (ATA) about the abolition of the scheme.

3.105 The RACQ expressed concern that the abolition of the FSGS would increase fuel costs in regional and remote areas by 1.1 to 3.3 cents a litre, as parties in the supply chain sought to protect their margins, at a time when fuel prices were extremely high. It suggested that the case for the FSGS remained just as valid now as in 2000, particularly in a geographically large, decentralised state such as Queensland.⁶³

3.106 In contrast, the Australian Trucking Association (ATA) supported the abolition of the FSGS. Mr Gow told the Committee:

We welcomed that announcement in January 2004 on the understanding that the money would be spent on roads in the areas where the Fuel Sales Grants Scheme had applied—in other words, regional and remote Australia. We believe that has happened with the announcement of increased road expenditure in the budget on 9 May.⁶⁴

3.107 In the ATA's opinion, the FSGS lacked transparency as it could not be established that fuel users benefited from the scheme. It referred to the Fuel Taxation Inquiry's recommendation to abolish the scheme.⁶⁵

3.108 At the hearing, the Committee asked Treasury officials to address the RACQ's claim that fuel prices would rise as a result of the abolition of the Fuel Sales Grants

61 Fuel Taxation Inquiry Report, March 2002, pp. 161–163.

62 The Hon. John Anderson MP and Senator The Hon. Ian Campbell, Joint Media Release 'Major downpayment on Australia's transport future', APM4/2004, 22 January 2004.

63 Royal Automobile Association of Queensland, *Submission 1*. See also *Proof Committee Hansard*, 5 June 2006, pp. 65–67.

64 *Proof Committee Hansard*, 5 June 2006, p. 2.

65 Australian Trucking Association, *Submission 19*, p.1.

Scheme. However, Treasury was unable to provide evidence to support or refute the RACQ's claim. Mr Colmer explained that:

We have not done any modelling on the impact of the repeal of the Fuel Sales Grants Scheme. It was a policy decision of government—a decision made about where their spending priorities were.⁶⁶

3.109 He advised that the government's decision was taken as part of the broader consideration of the White Paper on Energy Policy, with the money saved to be redeployed into the AusLink program.⁶⁷

3.110 Treasury emphasised that the FSGS had previously been examined by the ACCC and the Fuel Taxation Inquiry who were unable to provide any evidence of its real impact. In the light of this, Mr Colmer told the Committee:

All I can say is that we do not know what the impact will be. It is likely to be variable. It is likely that different recipients of the money have used it for different purposes.⁶⁸

Committee's conclusions

3.111 The Committee supports the Government's initiative to discontinue a scheme that was of doubtful effectiveness and to redirect the funding to road improvements.

Greenhouse Challenge Program

3.112 The Greenhouse Challenge Plus Program (henceforth referred to as the Program) is part of the Australian Government's Climate Change Strategy, announced in 2004. The Program is designed to:

- reduce greenhouse gas emissions;
- accelerate the uptake of energy efficiency;
- integrate greenhouse issues into business decision-making; and
- provide more consistent reporting of greenhouse gas emissions levels.⁶⁹

3.113 To join the Program, businesses are required to establish an agreement with the Australian Government to manage and reduce greenhouse gas emissions. Assistance is given to businesses in developing their agreements, measuring and monitoring their greenhouse gas emissions and reporting annually to the government and public on their achievements.

66 *Proof Committee Hansard*, 5 June 2006, p. 74.

67 *Proof Committee Hansard*, 5 June 2006, p. 76.

68 *Proof Committee Hansard*, 5 June 2006, p. 75.

69 Department of the Environment and Heritage Australian Greenhouse Office "About Greenhouse Challenge Plus", at <http://www.greenhouse.gov.au/challenge/members/about.html> [accessed 7 June 2006]

3.114 These Bills establish the requirement for businesses that claim over \$3 million each year in fuel tax credits to join the Program⁷⁰. The Explanatory Memorandum states:

Membership of the Greenhouse Challenge Plus Programme signals an expectation that large energy users will participate in an active partnership with government to address climate change. The programme complements the Government's other energy and greenhouse gas abatement measures addressing large energy users.⁷¹

3.115 Under subsection 45-5(1), a taxpayer will not be able to claim a total of more than \$3 million of fuel tax credits in a financial year unless at the time they make the claim they are a member of the program or another program determined, by legislative instrument, by the Environment Minister.

3.116 Some submissions suggest that the requirement to join the Program should be restricted to companies who burn the fuels that they purchase, thereby releasing combustion gases. ACCORD Australasia Ltd (ACCORD), which represents manufacturers and suppliers of formulated consumer, cosmetic, hygiene and specialty products, made a submission and gave oral evidence to the inquiry. ACCORD questions the need for companies to join the program purely on the size of their tax credit, rather than on their actual carbon dioxide emissions.⁷²

3.117 Mr David Pilkington, Industrial Manager, Recochem Inc told the Committee that Recochem's factory currently runs with a very high energy efficiency, and that the Greenhouse Challenge Plus Program would not assist in their energy efficiency since there is little energy to be saved⁷³. Mr Pilkington also noted that solvent emissions are currently being reported through the national pollutant inventory⁷⁴.

3.118 The Committee is unconvinced that any change to the government's policy in relation to this program is warranted.

Recommendations

The Committee recommends that the Bills be passed, but considers that there are a number of issues that require resolution before they proceed. Accordingly, the Committee recommends that:

- **during the transition period announced by the Minister, the Government re-examine the effects of the legislation on manufacturers who use**

70 EM, p. 19.

71 EM, p. 44.

72 *Proof Committee Hansard*, 5 June 2006, p. 12. (Mr Brock)

73 Recochem, *Submission 3*, p. 4.

74 *Proof Committee Hansard*, 5 June 2006, p. 13.

hydrocarbons for non-fuel manufacturing processes, with a view to minimising and offsetting any adverse effects;

- **the Bills be amended to exempt oil recycling companies from the operation of the legislation;**
- **the Government implement an urgent review of the effectiveness of the Product Stewardship for Oil program, with a particular focus on whether the program will continue to be effective in meeting its objectives following the abolition of the energy grants credits scheme and the implementation of the fuel tax credits system;**
- **the Minister for Environment and Heritage initiate a review of disposal requirements applying to used oil, and in particular whether more stringent standards on the use of this material as a burner fuel are appropriate; and**
- **the Government reconsider whether Subclause 43-5(2) of the Bill is fully consistent with the Government's other policies in relation to encouraging the development of a biodiesel industry and if appropriate, exempt the industry from its operation in the meantime.**

Senator George Brandis
Chair

Additional remarks from Labor Senators

Under this Bill many businesses will pay fuel tax for the first time. The excise or customs duty is to be paid upfront and the associated credit to be claimed by businesses via the business activity statement (BAS) in the same way as input tax credits are claimed for the GST.

The committee has received strong representations from manufacturers and ACCI. In addition, primary producers would be adversely affected.

These manufacturers claim that the new arrangements will potentially cause major cash flow problems for medium sized producers. Currently these producers are effectively fuel tax free due to remission certificates from excise and customs on fuel inputs. Now they must pay the fuel tax and get the credit when they lodge the BAS. Producers with turnover of \$20m must report monthly for GST purposes. Providing that the GST refunds are made quickly these producers will not face major delays. However, businesses with turnover from \$2m-20m report quarterly and thus face major delays between payment of the tax and the associated credit.

Clearly this measure would cause cash flow problems. In addition the ATO has been very slow in processing refunds when there has been an audit or review of the BAS as identified by the ANAO.

Businesses are still likely to face cash flow concerns after the two year transitional period expires. There is no reason to expect that their cash flow situation is likely to change substantially over that period. Consequently, if there is a problem now then the problem will still exist after the transitional period expires.

Labor Senators are therefore predisposed to a model whereby the option of applying for payment receipt of the fuel tax credit upon payment of the fuel tax continues beyond the two year transitional period. In addition, there seems no reason for the application to have to be made by 31 December 2006 to be part of the transitional scheme as proposed in the Minister's amendments now in circulation.

Labor senators believe that the Bill should be amended along the following lines:

- 1) the two year transitional arrangements for early payment of the fuel tax credit be provided for on an ongoing basis; and
- 2) that the 31 December 2006 date for receipt of applications for early payment be dispensed with.

Senator Ursula Stephens

Senator Ruth Webber

Australian Democrats

Additional Remarks

Fuel Tax Bill 2006 and related bill

This legislation is the clearest example yet of policy in a vacuum with no regard to the consequences – on business, on the environment, on rural economies, on jobs. The Government has cherry-picked from the recommendations of task forces, studies and inquiries and has not consulted with those most affected nor taken notice of their entreaties.

The Democrats are pleased that the Chair's report identifies many of the problems associated with this Bill, and identifies the needs for resolution of these before it proceeds.

However, we are concerned about the Government's lack of support for the biofuels industry in particular and make the following additional comments.

The officers from Treasury facing the critics of this bill – and there are many – were able to provide no rationale for the changes, offering only that they are 'policy decisions of government'. This exchange at the committee hearing into the bill demonstrates the point:

CHAIR— It is said, although I note only by RACQ, that the effect of the repeal of the Fuel Sales Grants Act will be to increase petrol prices. What do you say about that?

Mr Colmer—We have not done any modelling of the repeal of the Fuel Sales Grants Scheme. It was a policy decision of government—a decision made about where their spending priorities were.

CHAIR—Do you dispute the RACQ claim that this will increase the price of fuel? Do you say that there is no evidence for that? What exactly do you say, Mr Colmer?

Mr Colmer—The only thing that I can say on that particular point is that the Fuel Sales Grants Scheme was examined initially by the ACCC some time ago and it was subsequently examined again by the fuel tax inquiry of 2001. They were not able to provide any evidence around what its real impact was. I think it is a program that has been around and the government has taken a decision to redeploy that money on to things where there can be some harder and firmer results.

Senator ALLISON—Has any other department bothered to look? What about PM&C or industry?

Mr Colmer—You would have to ask them.

Senator ALLISON—You have not?

Mr Colmer—I have told you: we have not done any modelling of this.

Mr Colmer—My view is irrelevant. This is a policy matter for government.

Mr Lake of Biofuels Australia, said his organisation had questioned Treasury about the impact:

The exact words that came from one of the parties I spoke to in Treasury were: ‘Our concerns are not the externalities of the fuels, only the simple costs of what comes in and out, and it is your responsibility to make sure that the politicians tell us to change it.’ It was that blunt.¹

When asked about the level of awareness and understanding in the industry about the impact of these changes, Mr Lake told the committee that it was only a week ago that complex system of grants and credit schemes was able to be explained to producers and other industry people, in part because the Tax Office had only just corrected the script on their telephone line that had been giving people the wrong information.

Even the Tax office has had trouble trying to understand this and that means that, when the bill was put forward a considerable time ago, people could not understand the calculation of what grant went where or how it was all applied. They are still trying to work it out themselves.²

Main features of the bill

Before discussion the main features of the Bill it is worth noting that Australia's fuel taxes are amongst the lowest in the world and Australia is one of the few to have reduced excise on fossil transport fuels.³ As part of the new tax system proposed in 1999, the Government proposed to reduce excise by \$2 billion a year – a cut more than halved through negotiations with the Democrats. In March 2001, biannual indexation of excise on transport fuels was frozen at around 38 c/L. Access Economics estimated that revenue foregone from this freeze will be \$1.85 billion for 2005/6.⁴ The Fuel Taxation Inquiry recommendation to reintroduce indexation was rejected by the Government.

The Fuel Tax Bill 2006 reduces fuel taxes on diesel by a further \$1.5 billion.

On 1 July 2006 all existing rebates and subsidies are to be replaced with a single system of fuel tax credits and reduced excise on diesel. Products such as solvents will for the first time be required to pay excise to be offset credits claimable via the Business Activity Statement.

¹ Mr Lake, Biofuels Australia, *Committee Hansard*, Monday 5 June 2006, p. 34.

² Mr Lake, Biofuels Australia, *Committee Hansard*, Monday 5 June 2006, p. 38.

³ Excise taxation: developments since the mid-1990s, Parliamentary Library, Research Brief no.15, 2005-06, p.13.

⁴ Excise taxation: developments since the mid-1990s, Parliamentary Library, Research Brief no.15, 2005-06, p.15.

Excise, foreshadowed in the 2003/4 budget, will be imposed on alternative fuels on 1 July 2011 at a rate that is approximately half the equivalent rate of excise on petrol-fuels but offset by tax credits that will be progressively phased out by 1 July 2015.

Commercial vehicles over 4.5 tonnes in metropolitan areas will be entitled to credits for diesel and around 20 cents of the 38.143 cents a litre in diesel excise will be declared a road user charge.

Businesses claiming more than \$3 million a year in fuel tax credits will be required to be members of the Greenhouse Challenge Plus Program, obliging them to measure their greenhouse gas emissions, develop action plans for abatement and report to Government on their actions. Achieving any actual abatement is not mandated.

Credits for vehicles of more than 4.5 tonnes will also depend on vehicles being no more than 10 years old that meet in-service emission standards and are properly maintained.

The Fuels Sales Grants Scheme, a 1 c/L grant provided to fuel retailers in non-metropolitan areas, worth over \$200 million a year is to be phased out.

From 1 July 2012, all off road business uses of certain fuels will be effectively excise free, likewise all diesel used in electricity generation and burner fuels such as heating oil and kerosene.

Going against the evidence - the Howard Government's record

The Australian Democrats strongly oppose this legislation because it is a clear reversal of the negotiated agreement under the ANTS package in 1999 and reintroduces many of the problems that were overcome by the agreement. The Democrats negotiated major changes to the package, informed by an extensive inquiry by the Senate Environment, Communications, IT and the Arts References Committee. That inquiry was told that the proposed \$2 billion in cuts to petrol-diesel would wipe out the cleaner but still fledgling alternative and renewable fuel industries – compressed natural gas, liquefied natural gas, LPG and biofuels.

The Democrats did support the Government's policy objective of reducing transport costs for rural communities and agriculture at a time when there was a serious decline in rural economies but negotiated to put in place a suite of measures to more than halve those cuts to diesel excise and address the very significant problems drawn to our attention in the 1999 inquiry process.

That inquiry was also informed that the industry that collected many millions of litres of used oil from mining companies, service stations and industry right around the country - oil that would otherwise be dumped in landfill or worse - and removes the contaminants for reuse or, better still, re-refines it to produce a pure lubricating oil product, would cease to be viable. Petro-diesel would be so cheap as a consequence of an 18 c/L cut in excise that these important industries would no longer have a

market for their product because the cost of collection, treatment and distribution would well exceed the retail price of diesel, even though no excise was being paid on the recycled product. An industry package – the Product Stewardship for Oil Program - was negotiated for recycling waste lubricating oils. It funded collection tanks in rural areas and recognised the cost of treatment and re-refining and the difficulty in finding markets for the product, given the resistance by the major oil companies in carrying recycled stock in retail outlets. Those measures were developed with the industry and were successful in very significantly increasing the amount of oil collected for recycling to 200 million litres a year.

The Democrats negotiated the removal altogether of excise from rail, in recognition of the competitive advantage given to long haul road transport in the diesel excise cuts and the facts that rail use charges were significantly higher than road use charges and that there were very significant benefits in encouraging the much more freight to be moved by rail.

We negotiated national standards for fuels that, for instance, progressively and massively reduced the sulphur content of diesel from around 1500 ppm to less than 50 ppm, and testing and standards for vehicle emissions, bringing Australia into line with European standards over time and improving air quality.

The excise removal on diesel for remote power generation was reversed and the excise that was previously ‘refunded’ to state governments was re-directed to a very successful program to bring renewable energy to remote communities, often in combination with diesel power. It appears the changes in this bill remove that incentive program.

Through the Diesel Fuel Rebate Scheme (off-road) and the Diesel and Alternative Fuels Grants Scheme (on-road) the Democrats negotiated limits on the diesel excise cuts to heavy interstate freight transport and vehicles over 4.5 tonnes travelling outside metropolitan areas and off-road uses eligible for removal of excise on diesel were confined. The price relativity of alternative fuels was secured and grants made available for vehicle conversions.

In 2003, the Government introduced the Energy Grants Scheme that expanded on and off-road uses eligible to recover excise on fuels through the ATO. Biofuels would be subject to the same excise as petro-fuels, to be phased in from 2008. The Democrats strongly objected, warning that this would spell the end of the industry. The Government relented, agreeing to halve the effective rate of excise and to put back its introduction to 2011 and by 2015 excise offsetting energy grants would be removed altogether – a measure claimed by Government to ensure the viability of alternative fuels well into the future.

It should be noted that in countries such as Germany where biofuels have gained a significant share of the fuels market, they have been allowed to develop in an excise free environment for more than 20 years. According to Bioworks Australia, Germany’s approach led to small community based production, happily co-existing

with larger producers, with an output now in excess of 2 billion litres per annum. This makes Australia's 350 ML target for biofuels look very paltry indeed.

Sweden imposed excise on biodiesel in 1997 which halted development of the industry and only recently Sweden's policy was reversed as part of its policy target of being completely fossil free by 2015. (Letter to the Committee from BioWorks dated 6 June 06)

The Issues

Alternative Fuels

This Bill was most severely criticised for the effect it will have on Australia's biofuel industry. Producers argued that this bill represented the removal of Government support for biofuels and the demise of the sector and while difficult to precisely calculate the impact, submitters said these were some of the likely impacts on biodiesel:

From 1 July 2006 100% biodiesel and 49% blends of biodiesel for both on and off road use are likely to be more expensive than petro-diesel (0.13c/L and 0.35c/L)

By July 1010 for heavy on-road users that difference will be as high as 8c/L.

For off road use – farmers, mining companies - 100% biodiesel will become 38c/L more expensive than petro diesel.

This bill effectively returns to the original intention of the Government, using a complex interaction of road user charge, designation of 5% biodiesel blends as the standard for highest credits and the treatment of the current Energy Grants (Credits) Scheme as an excise offset and, in so doing, discriminates against rural off-road users of biodiesel in particular and against biofuel production in general.

Biodiesel and biodiesel blends are developing significant markets for their product that are now in jeopardy. Mr Chris Mapstone of Gardiner-Smith Ltd said the biodiesel industry had grown very quickly and could be producing over 800 million litres of biodiesel a year and were it not for the changes proposed on July 1.

This growth has been possible because biodiesel has not had to rely on marketing the product through the four major oil companies, as is the case for ethanol, supported by the ban on blends of more than 10% ethanol in petrol and the ongoing reluctance by Government to mandate even that blend.

This legislation, by designating 5% biodiesel/95% diesel as the biofuel standard, effectively extends to biodiesel the marketing barrier that exists for ethanol.

Mr Mapstone explained:

With ethanol, you must align yourself with a large retail network. With biodiesel, we can make a product that is fit for purpose on spec and we can go direct to end users, whether they be road transport, off-road users, fishing fleets or the like. That is another reason why the industry is growing so quickly. It will stop very quickly as well, if it is not understood where this legislation will put us.

The issue with the oil companies is that, if the majors chose to adopt the role of purchasing biodiesel to put it into hydrocarbon diesel at a level of five per cent or less, they could gobble up the 800 million litres we currently have in production and it would not even make a dent. So it does not matter whether we are popular or not. If they wanted it, they could take it.

The bulk of the customers that we target currently are customers of the majors—in particular, mining industries. If you also look at where we are with the current specification for diesel, having a low-sulphur diesel of 50 parts per million, biodiesel is being added to that in the US just as a standard B5 blend. That is to add lubricity back into the diesel to prevent wear within fuel systems. So, similarly, it could be taken up as five per cent or less and sold and no-one would even know it was in there.⁵

Mr Lake of Biodiesel Australia concurred:

The biodiesel industry in Australia has only just started. In the last 12 months, production has gone from virtually zero to 180,000 tonnes. I have a list of the projects which are currently planned. With the incentives offered by the government so far and the current tax position on excise, it will produce well over one billion litres of biodiesel per annum. Apart from the plants which are currently under construction, the proposed changes to the excise rulings and the way in which the rebate and producer grants are going to work will make 99 per cent of the biodiesel market unviable. The way the biodiesel producer grant is applied will effectively offset the excise paid or payable, or liable, for the production of the fuel—that is how it is treated by the tax office.⁶

Mr Lake also advised that:

..... while biodiesel currently has a moderate advantage, as of next month biodiesel will suffer a price disadvantage. Definitely, in the case of on-road applications, there will be a price penalty of anywhere between 2c and 4c. In the case of off-road applications, that price penalty is around 38c, the full excise price. What we understood to be the intent of the formation of the biofuels industry was to have biofuels implemented in areas where they would have the maximum benefit, and those do include a lot of off-road applications.

⁵ Mr Mapstone, *Committee Hansard*, Monday 5 June 2006, p. 35.

⁶ Mr Lake, Biofuels Australia, *Committee Hansard*, Monday 5 June 2006, p.32

The types of markets for the off-road applications, where biodiesel has the greatest application, include marine applications, such as the trials currently under way for Sydney Ferries and trials operated by Brisbane City Council. Being state governments or local councils, while they will pay a slight premium for environmentally effective products or things that solve other operational issues, such as occupational health and safety, they would not incur the cost penalty for those particular operations. Likewise, in mining environments, where the emissions profile of biodiesel makes it highly valuable, we will not have time to actually establish and prove the effectiveness of biodiesel. To give you an idea of the time that this often takes, the initial approach to the New South Wales state government asking for a trial to the trial actually starting took three years, and we are still probably about another 18 months away from the second phase of the trial being completed. So it is a five-year cycle, and a lot of these valid applications for biodiesel are simply not going to be possible and producers will have to scrap the whole program. That is what they are looking at at the moment if this bill goes ahead.⁷

Mr Lake further advised that the largest current producer of biodiesel in Australia produces 45 million litres a year and has another planned to produce 160 million litres and other companies have plans for further expansion, however the opportunities that they have for the development of those markets and development of those feed stocks, predominantly from Australian production, are going to disappear very quickly because none of these new projects will be viable under this legislation:

..... we will go from nearly a billion litres of biodiesel per annum to a situation within the next two to three years where we will be lucky to keep the couple of hundred million litres that are coming online now.

A lot of infrastructure has been put or planned, and there are new projects being planned at the moment, all based on a certain return and a certain revenue opportunity for a period out to the phase-out of the excise or the producer grant. Effectively, we were given a carrot, and that carrot has been put away and the chopping block has been stuck in front of it.⁸

Under current legislation, the most price effective blend for off road users of biofuels is 49% biofuel and 51% diesel but under this bill, the highest credits go to 5% biofuel and 95% petro-diesel – the new ‘standard’ for biodiesel.

The following table submitted by Biodiesel Association of Australia illustrates the position pre and post 1 July 2006 for on and off-road biodiesel:

⁷ Mr Lake, Biofuels Australia, *Committee Hansard*, Monday 5 June 2006, p.32

⁸ Mr Lake, Biofuels Australia, *Committee Hansard*, Monday 5 June 2006, p.33

TODAY ON ROAD DIESEL		TODAY ON ROAD BIODIESEL [B100]		BIODIESEL DIFFERENTIAL
Gate Price	1.32	Gate Price	1.25	
Rebate	0.19	Rebate	1.19	
Final Price	1.13	Final Price	1.06	0.07
FROM 1 JULY 06 ON ROAD DIESEL		FROM 1 JULY 06 ON ROAD BIODIESEL [B100]		
Gate Price	1.32	Gate Price	1.25	
Rebate	0.38	Rebate (EGCS)	0.18	
Road User Charge	0.20	Road User Charge	0.20	
Final Price	1,14	Final Price	1,27	-0.13
TODAY OFF ROAD DIESEL		TODAY OFF ROAD BIODIESEL (B49)		
Gate Price	1.32	Gate Price	1.29	
Rebate	0.38	Rebate	0.38	
Final Price	0.94	Final Price	0.91	0.03
FROM 1 JULY 06 OFF ROAD DIESEL		FROM 1 JULY 06 OFF ROAD BIODIESEL (B49)		
Gate Price	1.32	Gate Price	1.29	
Rebate	0.38	Rebate	0.00	
Final Price	0.94	Final Price	1.29	-0.35

It is clear that under the changes scheduled to take effect from July 1 2006, the benefit to the on road biodiesel user reduces from \$0.07 to a \$0.20 cents per litre disadvantage. (-\$0.13 against Hydrocarbon Diesel).

In the case of the "off road user" of Biodiesel, the position changes from a \$0.03 cents per litre price advantage to a \$0.38 cents per litre disadvantage (-\$0.35 per litre against Hydrocarbon Diesel) making the use of Biodiesel prohibitive for "off road use". (Supplementary advice from BAA received 13/6/06)

Transfield Holdings Pty Ltd's submission described the bill as a terminal threat to an industry it was in Australia's interests to develop and described the problems:

Heavy On-Road Users

This group is key to the development of the Biodiesel Industry. They use nearly all the diesel sold for on road use and have extensive company storage and distribution facilities that make the distribution of a new and different fuel logistically easier and independent of the major oil companies. Their knowledge of the performance of their vehicles and the desire to cut fuel costs to the minimum make them particularly interested in using B20 (20% Biodiesel, 80% conventional diesel) and higher blends. But only after they have conducted detailed trials and tests. Such trials have been increasingly conducted over the past year or so, all of which have been successful. This has led to a rapid uptake by this sector, particularly B20 and above.

This sector buys in bulk and receives significant discounts from the oil majors. Therefore deep discounts (usually 10 to 20 cents/L) have had to be offered to encourage this sector to conduct the trials and accept greater logistical complexity (blending etc).

As illustrated in the table below, the proposed phasing out of the Energy Grants (Credits) Scheme will render biodiesel uncompetitive within two years in the heavy vehicle sector, or more rapidly if the present historically high oil prices decline.

The table assumes a Biodiesel sale price of \$1.05, but often a higher discount is required as discussed above.

	June 06		July 06	July 07	July 08	July 09	July 10
Petro-diesel	c/L	Petro-diesel	c/L	c/L	c/L	c/L	c/L
Purchase price	1.35	Purchase price	135	135	135	135	135

Rebate	(19)	Road user charge	20	20	20	20	20
		Excise rebate	(38)	(38)	(38)	(38)	(38)
Effective price	116		117	117	117	117	117
Biodiesel		Biodiesel					
Purchase price	105	Purchase price	105	105	105	105	105
ECGS*	(18.5)		(14.8)	(11.1)	(7.4)	(3.7)	(0)
		Road user charge	20	20	20	20	20
Effective price	86.5	Effective price	110.2	113.9	117.6	121.3	125
Biodiesel advantage			6.8	3.1	(0.6)	(4.3)	(8)

* Assumes price after application of biodiesel manufacturer excise rebate

The declining competitiveness of Biodiesel in this sector as shown above will be very discouraging to investors. Maintaining the Energy Grants (Credits) Scheme at its present level for the next five years (or replacement with a similar mechanism) would go some way towards ameliorating this effect and we recommend the Committee give serious consideration to this.

Off-Road Users

This is another large potential market segment for Biodiesel. The logistics of blending and storing alongside conventional diesel and relatively low production to date have meant that the market has hardly been touched. It will remain that way if the proposed Bill is accepted without amendment because there will be no commercial incentive for it to consider using Biodiesel.

We accept that the current arrangements need amending because there is no doubt an unintended 'double dipping' exists that highly favours Biodiesel. Under current arrangements, off-road users pay an effective price of around \$0.85 for conventional diesel (after GST and fuel excise rebate has been rebated and if they use a 49% blend of biodiesel, additional rebates mean an effective price of \$0.71, or a 14 cent per litre saving over conventional diesel.

The amendment proposed by the Bill will no longer allow for diesel blends of up to 49% to be classified as 'diesel' (and thus claim the excise rebate), and therefore all the price advantage to off-road users of using biodiesel will be removed. We understand that conventional diesel will continue to be available for about \$0.85/L, but that Biodiesel blends will cost off road users between about \$0.90 and \$0.95/L.⁹

In his submission, Mr Mike Burrows agrees that the denial of an energy grant for off-road users is discriminatory for primary producers and 100% diesel will not be economic. He says:

It seems illogical to offer an incentive to use biodiesel in a low percentage blend but no incentive to use stronger blends or 100% product. This removes the incentive for underground mining companies to use the cleaner burning (healthier) product and so protect workers and the environment. It removes the incentive for fishermen to use a biodegradable product and so protect their catch and the environment. It removes the incentive for farmers to use a biodegradable fuel, protect the environment and grow the production of oil seeds such as Canola which will be used as the feedstock for biodiesel. All of this in turn removes the incentive for potential investors to build the necessary plants to produce biodiesel.

As off-road use of biodiesel will only be supported in a blend with diesel any importers or local producers will need to be aligned with a major oil company to access diesel and the large storage required tanks to allow blending. To mix a 5% blend the required storage facility is 20 times larger than if a 100% product was produced.

This denies the users the possibility of alternative suppliers entering the fuel market especially the retail market which is dominated by the major oil companies and Coles/Woolworths. The further strengthening of the grip of these select companies on the Australian market is not in the national interests.¹⁰

Transfield Holdings also described the impact on small users:

Small users typically obtain their fuel from service stations, which are mostly supplied by the major oil companies. They often have concerns about the quality of the fuel and are not normally as knowledgeable or equipped to trial fuels that might be considered 'experimental'. Hence this group is most likely to be introduced to Biodiesel via a B5 blend which meets the 'diesel standard' and therefore raises no issues with vehicle warranties etc. The combination of the low blend ratio and the smallness of this market, means that the Australian Biodiesel industry will struggle to achieve critical mass.

⁹ Transfield Holdings, *Submission 24*.

¹⁰ Mike Burrows, *Submission 4*.

Even this struggle will be to no avail if, as is likely, the oil majors follow BP's lead and capture this market by hydrogenating fats and oils in their conventional refineries and claim the excise exemption granted to Biodiesel at this level of blend. The Bill has already been amended in the House of Reps to permit this

We recommend the Committee take out the amendment allowing the 38 cent/L reduction on diesel made in conventional refineries from fats and oils.¹¹

Mr Lovelady, Director of BioWorks told the committee:

Our customers in regional communities are not big fleet operators or big oil companies. They are farmers and small businesses operating a few trucks and heavy equipment. They get no special deals from big oil. There are no fleet discounts or rebates for them. They pay bowser price and they are struggling.¹²

Many said this bill was a major concession to the petroleum companies that would limit growth in biodiesel to only that which the oil companies were prepared to produce or accommodate. Submitters argued that the advantage for regional producers was that they avoided double transportation by making fuel where the raw materials were available and the fuel consumed but with this legislation they would have to compete for raw materials against petroleum companies that have a 38 c/L advantage. Mr Lovelady of BioWorks said:

The transportation advantage will be lost and the raw materials will be acquired by a supplier to a blend, distributed as diesel – these central producers will be willing and able to pay more for the same raw materials.

For our primary producers the position is actually worse. The changes in the bill make it uneconomic for them to use biodiesel. Yet these are the people most affected by rising oil prices.¹³

The Renewable Fuels Australia said in their submission:

The major barrier to the development of the industry in Australia has been securing access to the mainstream Australian transport fuel market dominated by the four major overseas oil companies in Australia – Caltex, Shell, BP and Mobil. For this reason, new biofuels industry growth in Australia has been severely limited.

Today alternative fuels such as ethanol and biodiesel are widely seen as playing an essential role in making the transition from traditional petrol and diesel fuels to the fuel technologies of the future, and worldwide there has been a strong surge in Government initiatives to increase biofuels production growth as a

¹¹ Transfield Holdings, *Submission 24*

¹² Mr Lovelady, *Senate Committee Hansard*, Monday 5 June 2006, p.51.

¹³ Mr Lovelady, *Senate Committee Hansard*, Monday 5 June 2006, p.51-52.

means of reducing dependence on imported oil and stimulating national energy security. The United States and Brazil are leading this push with the European Community and some 25 other countries initiating active programs to encourage the production of ethanol and biodiesel as alternatives to petroleum transport fuels.

The lack of policy co-ordination and policy inconsistency in relation to biofuels has been a persistent problem in Australia, and this has hindered future growth. The Biofuels Taskforce, for example, represents the development of positive policies for new ethanol and biodiesel industry growth, while Fuel Tax Bill 2006 represents a clear example of impediments being put in place that will undermine the achievement of those policy objectives.¹⁴

Witnesses were questioned about why it was that the ever increasing price of oil would not give advantage to biofuels over time.

CHAIR—But that is subject to the price of oil, surely. If the price of oil continues to rise and the price of your feedstock is not a function of the price of oil, it would make you more competitive, surely.

Dr Humphreys—No, there is a whole new dimension coming into the marketplace. ... Because of the rise in Europe and in the US of the biodiesel industry ... there is now a rapid acceptance of biodiesel around the world. There now is a direct correlation starting to show between the price of a barrel of oil and the price of our start material, the edible oil. A number of reports have come out recently, particularly in Europe, showing that the demand for canola oil and palm oil in Europe for biodiesel purposes has started to link them to the price of a barrel of oil.

... we are not isolated from the international traded commodities of canola, sunflower or cottonseed. Those commodities are influenced more by some of the larger producers around the world, particularly in Europe and the US. Our price here of edible oil is benchmarked against those international standards. Those international standards are now being affected by the increasing use of these oils for biodiesel and that is bringing a new paradigm into the agricultural markets around the world. That paradigm is that now some of these edible oil prices are being influenced by the fossil oil price because of the increasing use of these edible oils for manufacturing biodiesel, which is of benefit to the farming and agricultural community.¹⁵

Road User Charge

The Democrats are disappointed that the Government has not imposed road user charges on the very heavy road transport vehicles that would take account of their impact on roads, and on road safety. It is also regrettable that the Government has not moved to introduce a minimum pricing structure that guarantees a reasonable set of

¹⁴ Renewable Fuels Australia, *Submission 25*.

¹⁵ Dr Humphreys, *Senate Committee Hansard*, Monday 5 June 2006, p.36

wages, conditions and returns for long haul truck operators, currently squeezed by both customers and suppliers to deliver at unsustainable rates.

The National Transport Commission in its determination in late 2005 proposed major reforms in on-road taxes, with increases of about a third in registration fees for B-doubles and road trains and other increased charges to encourage safety and efficiency including an excise increase of 2.1 c/L designed to better reflect the impact of heavy vehicles on the road system. This would have raised the notional component of excise, after fuel tax credits, from 19.633 c/L to 22.1 c/L.

This determination was rejected by governments and instead, part of the excise currently paid by heavy vehicles, is to be formally recognised as a road user charge under this legislation.

The editorial in the Financial Review on 23 March, 2006 criticised this decision, saying:

It's a depressingly familiar story. A government agency decides on an economically sensible pricing regime only to have politicians, acting under heavy lobbying from vested interests, reject it. But on this occasion the politicians concerned – state and federal transport ministers – are not just flying in the face of economic logic. They are defying their own policies, and the desires of their masters – the Council of Australian Governments – to achieve an efficient freight system.

The National Transport Commission believed it was implementing agreed principles that all heavy vehicle classes should pay their own way when it recently recommended a new charging regime for very heavy trucks. The idea was to increase registration and fuel charges for the long, so-called B-double prime movers. These road monsters are cross-subsidised 21 percent by smaller trucks in terms of charges. Cross-subsidisation, the NTC says rightly, is not the way to promote optimal use of roads and vehicles

Australia needs a rational national road-charging regime, perhaps based on transport corridors, and one that is competitively neutral not only between the size of trucks but between road and rail. Whether that is set by the NTC or not, transport ministers have shown they need to be kicked off the job.

COAG at its meeting last month asked the Productivity Commission to examine the whole issue of efficient pricing for road and rail infrastructure via competitively neutral pricing. The political interference of transport ministers already is a bad omen for the outcome of that inquiry.

Waste Oil Recycling

Commenting on the importance of the waste oil industry in 2006, Mr Bob Pullinger of Australian Oil Recyclers Association Ltd explained:

Currently, we [waste oil recyclers] collect over 200 million litres per annum of used oil. A lot of it is in capital cities but it is also in regional and remote areas from mines and farmers. As an example, one litre of used oil can contaminate one million litres of drinking water if it is allowed to leach into the system. From an economic position, we are now a net importer of crude oil. Used oil helps adjust the imbalance and reliance on overseas crude as well as the balance of payments. In five years, used oil will have replaced one billion litres of imported crude into the Australian economy and will continue to do so year after year. By utilising used oil as a fuel for industrial purposes and as a lubricating oil, Australian companies save enormous amounts of money, as a recycled product is generally cheaper than the imported virgin product. From a social perspective, the industry employs in excess of 400 people directly in all states of Australia. Nearly all of these people are employed in small- to medium-sized enterprises. They collect used oil in capital cities but, more importantly, in rural, regional and remote areas of Australia.

The changes to the Excise Act as currently proposed will severely affect the ability and viability of oil recyclers and collectors to survive in business and to continue and collect trade in used oil. It will also put in jeopardy the government's goal and strategy of taking used oil out of the environment. Oil recyclers have been captured by this legislation to the detriment of our industry, we believe.

The greatest challenge we face at the moment is markets. The markets for used oil and oil generally are shrinking because of gas and other areas that are not excisable. Securing markets and keeping them is probably one of the major issues that face our industry. We have looked at some markets in the past and discussed them with the ATO. Who determines what a transport fuel is? Is marine fuel classed as a transport fuel and therefore subject to excise, even though the product may be going overseas? Are collectors of used oil to come under ATO excise control? Before a collector picks up generator, filtered and dewatered oil, is the waste oil excisable? We cannot seem to get answers to these questions from the ATO at this stage.¹⁶

The committee was advised that it remains the case that petroleum companies will not purchase re-refined oil from the sector for wholesale or retail sale.

The submission from Bituminous Products Pty Ltd who use waste oil to make bitumen based products for road building and industrial use, advised that the diesel

¹⁶ Mr Pullinger, *Senate Committee Hansard*, 5 June 2006, p.20.

excise cuts would erode their current commercial advantage over diesel though they recycle a product that is unsuitable for other purposes or re-refining.

Mr Pullinger, Australian Oil Recyclers Association Ltd, pointed out the inconsistency in taxing a product twice:

Under the information paper, Excise tariff reform—recycled fuel products, solvent, if it is reused in the business, is not considered manufacture and therefore is not subject to excise. Our company has been informed by the ATO that we will have to pay excise on recycled product used in manufacture of our business, so the consistency issue does not seem to be coming through.

In the same paper under the heading ‘How are recycled fuel products affected by the changes to the excise tariff?’ the ATO and Treasury recognise that diesel and petrol are part of a used oil product through leaking into the sump and they are now going to tax that product twice. From what we understand, Treasury is using the line, ‘It is more than 55 parts per million of sulfur, so therefore it cannot be the same product.’ This is ridiculous, in as much as the 50 parts per million of solvent is brought about by the degradation of the fuel oil and the diesel and petrol coming into contact with high-sulfur lubricating oils. Again, the same product has had excise paid on its original manufacture and now it is being paid again, so it is a double taxation issue, which probably brings in the validity of the legislation as it relates to our industry. To us, it is double taxation and excise on secondary manufacture, and I think the ramifications of that should be looked at.

We accept that, if recycled products are refined, they are subject to excise because a new product is produced. However, we do not produce new products; all we do is recover and clean up products that are already there. So it is not that we are actually making a new product or changing the molecular structure of a product. We use the same products that are already there and just recover them for use. And it comes down to refining: what is refining as it relates to used oil? Only one company currently claims a refined product; therefore, the manufacturing side of things is not consistent with the intention of this legislation. As far as I am concerned, that is fine.

Getting back to issues of recovering materials from the various recycling processes on which excise has already been paid, those materials if double-excised will not be viable in any way, shape or form, and therefore will not be saleable. What do we do with those materials and how are we going to place them in the future? The very nature of the changes in the bill will preclude our participation in some markets and therefore restrict the movement and placement of materials on an ongoing basis. Our usage patterns, whilst in the main uniform, in some instances are not, and that requires us to stockpile and move materials on a regular basis. If we have to pay excise on those materials, with quite likely six- to 12-months waiting on recovering that in terms of

selling the material, that also imposes a severe impost on the business going forward.¹⁷

Mr Pullinger agreed to the proposition that to overcome this problem there should be a refund on the excise already paid on oil at the point when all of it is returned for recycling.

Asked if the provisions in this bill would encourage re-refining of waste oil as opposed to the more simple, cheaper process of dewatering and removal of some contaminants, Mr Pullinger said:

I would say that, until it is cleared up, it would definitely detract from re-refining—mainly because it costs about \$20 million to put together a re-refinery. With this excise, you are so close to the cost of the virgin material that some of the major operators—for example, power stations—are now saying: ‘What’s the point in having recycled products? We may as well just buy diesel.’ With the excise, it is getting so close in price that they take the view: ‘Why should we deal with recycled product when we can buy virgin diesel?’

The environmental and business implications of this bill for recycling 200 million litres of waste oil a year are profound and the Democrats are deeply disappointed that the Government, knowing this to be the case, appears unconcerned. Like so much else in this bill, it is a very clear reversal of the agreement struck in 1999.

Tens of millions of dollars in investment has been made in the oil recycling sector on the absolutely reasonable assumption that measures had been put in place that would ensure that this important sector, indeed service, had a secure future. Mr Pullinger explained:

A lot of companies have put money into re-refining technology on the basis that there was no excise; now, all of a sudden, excise has been applied to a product that, again, has already had excise paid once.

Mr Grundell advised:

We are currently in the process of constructing a facility that will further value-add to used oil to be used as lubricant. The capital used in that facility is of the order of \$15 million alone. We have several major processing facilities throughout Australia and have spent tens of millions of dollars to establish that infrastructure. We installed a re-refinery in Sydney about 10 years ago on the back of another material we produce being exposed to excise at all levels, but that rule changed shortly after we committed to that capital and we have been wearing the burden of that change up to this point. This is yet another change in the way our products will be treated from an excise perspective, and it is becoming very difficult for us as a company and as an industry to predict with

¹⁷ Mr Pullinger, *Senate Hansard Committee*, p.21.

any certainty what our position in business is going to be like next year, the year after that or five years down the track.¹⁸

Mr Pullinger provided the committee with a copy of the submission made to the Treasurer on 2 August 2005 and representation made to the Minister for Environment and Heritage as well as the then Assistant Treasurer in which the problems for the industry were pointed out – advice that was ignored or rejected.

Mr Grundell advised:

We have obviously made several representations to various ministers and have been given good hearings, but it gets back to having to handle it under the excise and taxation regimes, which is extremely difficult when they are trying to treat us in the same way they would treat an international petroleum manufacturer. It is a completely different set of circumstances. The materials we handle bear no resemblance to the materials handled by the national fuel companies that operate within Australia. It is a difficult task for the officers and ministers involved to try to dovetail or to cater for what is done by the Australian used oil collection and recycling industry. To say that we even fit into that regime is difficult, but I can understand why it would want to be covered by the ATO and excise regimes.

However, having said that, they need to do that while having some appreciation for what it is that we do. Basically, we pick up a material that otherwise would be very harmful to the environment. We put it through various recycling processes, using varying plant and equipment. Then, as best we can, we place that material into alternative fuel markets. In addition, the industry is going down the road of trying to return that material whence it came, which is back into the lubricants market. Again, getting to that area takes on a whole new set of treatment regimes, processes and, indeed, intensive capital investment. That ultimately is the sustained approach. But, today and for the next 10 to 15 years, the industry will have to exist by supplying material into the alternative fuels market, in competition with major oil companies. Anything that makes that road more difficult will detract from the attractiveness of supplying alternative fuels into those markets.¹⁹

On the question of the oil currently being recycled being dumped in landfill as a result of this legislation, Mr Grundell advised:

Whilst there are responsible industries—and I think the majority of industry is responsible—that will take the responsible line in terms of proper placement of their generated used oil, there are other industries out there that are not so

¹⁸ Mr Grundell, *Senate Committee Hansard*, 5 June 2006, p.29.

¹⁹ Mr Grundell, *Senate Committee Hansard*, 5 June 2006, p.27.

responsible and will take the easy way out and that may lead to dumping of material or quitting it into inappropriate outlets.²⁰

Currently, the majority of used oil collected throughout the country is done on a free-of-charge basis.

It will either be stockpiled and/or quitted as a waste material to incineration or things of that nature.

Mr Pullinger—But it will be dumped as well.

Senator MURRAY—It is incinerated, it is stored as eternal waste in drums somewhere or, if it is irresponsibly used, it ends up in our water supplies or in our land—is that correct?

Mr Pullinger—Correct.

Mr Grundell—Correct.

Mr Pullinger—I think the other side of that is that collectors will collect in the areas where it does not cost that much to collect, which is major capital cities. The major impact will be in remote and regional Australia.

Senator WATSON—You just cannot keep collecting oil in 44 gallon- or 200-litre drums. I am not convinced about what is really going to happen to all this oil, if this industry becomes no longer viable. That is my concern. I speak as a farmer who has a problem with disposing of oil out of tractors.

Mr Pullinger—Taking that issue, I remember just before the PSO was introduced and I was at Moree where one of the farmers had 10,000 litres in 200-litre drums. He said, ‘If I can’t get rid of it, I will bury it.’ The other part of it is that the drums start to break down, as you will know.

Senator WATSON—Yes, that is right. You cannot keep storing it indefinitely.

Mr Pullinger—The drums start to rust and the oil leaks. The first casualty of that is the farmer because nobody is going to drive a truck hundreds of kilometres to pick up a 200-litre drum of oil when he can collect it in the city and cover the limited markets he has.²¹

In addition to the risk of waste oil dumping, Mr Pullinger advised that the Federal government investment under the PSO in providing collection tanks is likely to be wasted:

The government constructed a large number of tanks for used oil collection in remote areas, and they will be the first casualties. The 40,000 customers that Harold talks about—in our case it is 10,000—could multiply tenfold given that a number of these people are dropping oil into the tanks that the government has rolled out.²²

Compliance costs

²⁰ Mr Grundell, *Senate Committee Hansard*, 5 June 2006, p.27

²¹ *Senate Committee Hansard*, 5 June 2006, p.29

²² Mr Pullinger, *Senate Committee Hansard*, 5 June 2006, p.31

According to the Minister's second reading speech, this bill will lower compliance costs - a view not shared by many submissions. Mr Neil Morcombe of Bituminous Products said in his submission:

As a result of this bill, we may be put out of business, or at best, we will have more complexity of administration and reporting and a \$200,000 liability that we currently don't have ... and all for no positive result. These impositions on our business have no positive trade-off for anyone ... it is a sheer waste and unnecessary bureaucracy.²³

The BioWorks submission said the bill:

..... actually adds complexity to the current system, has wide ranging cash flow ramifications to business through incorporating fuel excise rebates to the BAS system, has negative consequences to the production and use of renewable fuels and is detrimental to regional development. It is hard to imagine in the current global environment a more regressive piece of legislation.²⁴

The overhaul of excise and credits was also criticised because the excise must be paid on production of the fuel and the rebate paid through BAS which, depending on the frequency of BAS claims made by particular businesses, is likely to cause significant cash flow problems, especially for small business.

Mr Pullinger of Australian Oil Recyclers Association Ltd told the Committee

One of the major issues in this legislation is cash flow. I have heard the paint people talking about the same thing. We have a similar exercise and so cash flow is probably one of the major problems for our industry, because the companies tend to be small to medium enterprises, apart from Transpacific Industries, which is a national company. This new legislation will effectively cost \$73 million in excise, which oil recyclers will have to find in order to fund their obligations under the Excise Act. Should a customer go bankrupt, all of a sudden that means the oil recycler loses a lot of money based just on the excise he has paid. As an example, an oil recycler will currently sell a filtered dewatered product for approximately 15c a litre. If you add GST, that is 16.5c a litre. Under the new excise regime, that product will go to 58.5c a litre, and customers are saying, 'We can't afford it,' from the cash flow perspective of their businesses as well.

We can see that the customer will get their excise back, but that does not help the supplier of the product. Another recycler from Western Australia was informed by the ATO that they will have to pay excise on stored product,

²³ Bituminous Products Pty Ltd, *Submission 8*.

²⁴ BioWorks Australia Pty Ltd, *Submission 7*.

which is ridiculous, because he stores the product trying to get rid of it, and it will cost him \$2.7 million in excise should this legislation go through.²⁵

In response to this criticism, the Government announced on 1 June a two-year transitional period to:

..... allow businesses to align their practices to the new arrangements so that by 1 July 2008 all fuel users who make claims will be aware of how the new system works and come on board.

..... eligible claimants may elect to make a claim for an early payment of fuel tax credit entitlements via a written form sent to the Tax Office. At the end of the tax period claimants will still have to report their fuel tax entitlements for the period on their BAS and reconcile the early payment.

Whilst the announcement was welcomed by some witnesses, others said it merely put off the problem for two years.

Cheaper imports

Mr Gordon from Renewable Fuels Australia, also raised concerns that the Government intends to reduce or eliminate the tariff on imported alternative fuel, which would have a substantial impact on the viability of the domestic industry.

Mr Gordon— The second issue relates to the import regime that is being proposed. In 2003, the Prime Minister made an announcement recognising the benefits of alternative fuels. With biofuels, we are talking about future energy security; reducing the balance of payments deficit; reducing, in a positive and significant way, greenhouse gas emissions; and stimulating economic and jobs growth in regional and rural communities in Australia. Imported fuels cannot deliver those benefits. In recognition of those benefits, a commitment was made that our industry would get—and this also would include LPG and CNG—a 50 per cent discount on our final excise rate.

Ethanol's final excise rate, for example, is deemed to be 25c per litre, so our final excise rate with that discount for domestic benefits is deemed to be 12.5c per litre.

Unfortunately, when we looked at the details of the fuel tax bill, it became clear that one of the first casualties would be that 50 per cent discount benefit. We have not been able to get a rational explanation of why we should deliver to imports the benefits of that 50 per cent discount, to which they make no contribution. The best response we have been able to get is, 'Well, we may get a challenge in the world trade court.' Forgive me, I cannot remember what it is called, but you will understand what I am referring to.

²⁵ Mr Pullinger, *Senate Committee Hansard*, 5 June 2006, p.20.

However, the reality is that this industry has some unique features. One is that we are talking about producers around the world that are all carefully protecting the domestic development of their industries. To do this, they all have high-tariff barriers of one form or another. This industry has not reached the production level or the position where it is reaching a commodity market. At the moment, the whole emphasis of the world is on increasing production. Brazil is looking at exporting, but the United States and many other countries are not; they are solely focused on providing domestic production security. That is what we are about. We have not even got off the launch pad in Australia, but we desperately need this time to be able to do that—and that is what we felt government policy would provide.

Senator ALLISON—Could you draw the committee's attention to the part of the bill that affects imports that effectively takes away the current tariff?

Mr Gordon—We provided the committee with a copy of our brief and at the end of that, on page 17, I can provide an example. In 2011, we start our entry into a fuel excise regime and we start at 2.5c per litre and we increase by the same amount—2.5c per litre—

Senator JOYCE—Where is this in the bill?

Mr Gordon—I cannot tell you that precisely.

Senator JOYCE—That is all right.

Mr Gordon—By 2015, we reach our final excise rate of 12.5c per litre. Unfortunately, under the bill, the interpretation we have been given is that in 2011 imports will drop from 38c per litre to zero and then join ethanol—the example we use—at 2.5c per litre, and they will walk up with us until the final excise rate of 12.5c per litre is reached in 2015. This means the complete excising of that 50 per cent benefit which the government proposed to give us the opportunity to use for future development.

Senator ALLISON—So the excise drops to zero in 2010—does it?

Mr Gordon—At the first point, yes, and then it comes up and walks up with us. Beginning at 2011, we are at zero, then we commence our rise into our new excise rate.

Senator JOYCE—It is at zero now and then it walks up to 12½ per cent. What is going to happen in 2012? Imported ethanol will meet us on the road up, so we will have imported ethanol at the same price as domestic ethanol. Therefore, domestic ethanol will collapse.

Mr Gordon—Imported ethanol, for example, will have the benefit of 12.6c discount anyway, because that comes down from 38c per litre to 25c per litre. We believe that the way it was going to work was that they were going to gradually descend on an annual basis to 25c a litre and that would be their level. At the same time, we were rising to 12.5c a litre and there would be a 12.5c per litre buffer, representing those domestic benefits.

Senator ALLISON—Have you had a chance to confirm your interpretation of the bill with the department?

Mr Gordon—We sat down with the Minister for Industry, Tourism and Resources last Wednesday night. He was surprised that this interpretation was made and uncertain that it was correct, but his departmental officers confirmed that this interpretation is the correct one.

Senator ALLISON—After your meeting?

Mr Gordon—Yes.

While it has become apparent that this Bill does not deal with this issue, it is understood that the Government still intends to proceed with reducing tariffs on alternative fuels.

In conclusion

The Democrats recommend that this legislation is withdrawn and that the current arrangements continue to apply unless and until the Government puts forward changes that foster rather than damage alternative fuels and waste oil recycling.

The Democrats will not support the bill.

Senator Lyn Allison

Senator Andrew Murray

Appendix 1

Submissions Received

Submission Number	Submitter
1	The Royal Automobile Association of Queensland (RACQ)
1a	The Royal Automobile Association of Queensland (RACQ)
2	Australian Paint Manufacturers' Federation Inc (APMF)
3	Recochem Inc
4	Mike Burrows
5	Confidential
6	Confidential
7	BioWorks Australia Pty Ltd
7a	BioWorks Australia Pty Ltd
8	Bituminous Products Pty Ltd
9	Vital Chemicals Pty Ltd
10	Confidential
11	TAC Adhesives
12	Sierra (Aust)
13	The Western Australian Farmers Federation (Inc) (WAFarmers)
14	NSW Farmers' Association
15	GSB Chemical Co Pty Ltd
16	ACCORD Australasia Limited
17	Confidential
17a	Catalyst Chemicals Pty Ltd
18	National Farmers' Federation (NFF)
19	Australian Trucking Association (ATA)
20	Confidential
21	The Australian Institute of Petroleum (AIP)
22	AgForce Queensland Industrial Union of Employers
23	Confidential
24	Confidential

- 24a Transfield Holdings
- 25 Renewable Fuels Australia (RFA)
- 26 Worth Recycling Pty Ltd
- 27 Confidential
- 28 BAA - Biodiesel Association of Australia
- 29 The AIM Group Australasia Pty Ltd (AIM)
- 30 Australian Oil Recyclers Association Limited (AORA)
- 31 The Australian Chamber of Commerce and Industry (ACCI)
- 32 Plastics and Chemicals Industries Association (PACIA)
- 33 Confidential

Additional Information Received

1. Letter from Australian Trucking Association (ATA) to Mr Neil Olsen, Deputy Commissioner of Taxation, Excise
2. Press Release, Minister for Revenue, The Hon Peter Dutton, MP, 1 June 2006
'Two Year Transition Period for Fuel Tax Credit Claimants'
3. Media Release, Australian Trucking Association (ATA)
'Fuel Tax Transition a Win for Small Trucking Businesses'
4. 'Australian Trucking Association Response to the Productivity Commission's Review of Economic Costs of Freight Infrastructure and Efficient Approaches to Transport Pricing', April 2006
5. Australian Oil Recyclers Association – Submission to Senate Enquiry – Fuel Tax Bill 2006 – Fuel Tax (Consequential and Transitional Provisions) Bill 2006
6. Australian Oil Recyclers Association Limited – 'Submission to the Review of the Excise Tariff Act'
7. 'Comparative Diesel vs Biodiesel Prices Pre and Post 1 July 2006'
Biodiesel Association of Australia
8. 'Oilseeds Oils & Meals" LMC Analysis May 2006
9. Letter from Minister for Revenue and Assistant Treasurer, The Hon Mal Brough, MP to Dr L Humphreys, Chief Executive Officer, Australian Biodiesel Consultancy, dated 15 June 2005

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10. Presentation of Gardner Smith – Forecasted Impact of Biodiesel Capacity on Feedstock Prices
 11. 'Comparative Diesel vs Biodiesel Prices Pre and Post 1 July 2006'
Biodiesel Association of Australia
 12. Opening Statement – Mr Craig Lovelady, Director, Bioworks Australia Pty Ltd
 13. Further information received from Mr Bill Frilay, Manager, Government Relations, BP Australia Pty Ltd, dated 6 June 2006
 14. Answers to Questions on Notice received from Department of Treasury dated 6 June 2006
 15. Answers to Questions on Notice received from Australian Chamber of Commerce and Industry (ACCI) dated 7 June 2006
 16. BAA – Biodiesel Association of Australia – Making the Fuel Tax Bill 2006 work for Biofuels and attachments Biodiesel Plants Comparative Diesel Prices
 17. Additional Information received from Transpacific Industries Group Ltd dated 13 June 2006

Appendix 2

Public hearings and witnesses

Monday, 5 June 2006 - Canberra

ARKLE, Mr Peter, Policy Manager, Rural Affairs, National Farmers Federation

BROCK, Mr Craig William, Director, Industry and Strategy
ACCORD Australasia Ltd

COLMER, Mr Patrick, General Manager, Indirect Tax Division
Department of the Treasury

FARGHER, Mr Ben, Chief Executive Officer, National Farmers Federation

FITES, Mr Gary, General Manager, External Relations
Royal Automobile Club of Queensland

FREE, Mr Anthony John, Manager, Excise Unit, Indirect Tax Division
Department of the Treasury

GARRAD, Mr Peter Milton, Executive Officer
Biodiesel Association of Australia

GNIEL, Mr Peter, Director, Trade and Economic Policy
Plastics and Chemicals Industries Association

GORDON, Mr Bob, Executive Director, Renewable Fuels Australia

GOW, Mr Neil, National Manager, Government Relations
Australian Trucking Association

GRUNDELL, Mr Harold, Executive Director
Transpacific Industries Group Ltd

HAMBROOK, Mr Michael, Executive Director
Australian Paint Manufacturers Federation Inc

HARDWICK, Mr Ross, Executive Officer, Economics
Farm Business and Transport, Western Australian Farmers Federation

HARMS, Mr Michael, Fuel Credits Unit, Indirect Tax Division
Department of the Treasury

HILL, Mr Andrew David, Director, Biodiesel, Renewable Fuels Australia

HUMPHREYS, Dr Len, Chief Executive Officer
Australian Biodiesel Group Ltd

IVERACH, Mr David, Chief Executive Officer, Investments
Transfield Holdings

KENIRY, Dr John, Chairman, Australian Biodiesel Group Ltd

LAKE, Mr Adrian Philip, President, Biodiesel Association of Australia

LOVELADY, Mr Craig Matthew, Director, Bioworks Australia Pty Ltd

MAPSTONE, Mr Christopher John, Member, Steering Committee
Biodiesel Association of Australia

PILKINGTON, Mr David Lloyd, Industrial Manager, Recochem Inc

POTTER, Mr Michael James, Director, Economics and Taxation
Australian Chamber of Commerce and Industry

PULLINGER, Mr Robert Lenard, Director
Australian Oil Recyclers Association Ltd

WILLETT, Mr Ken, Manager, Economic and Public Policy
Royal Automobile Club of Queensland

Appendix 3

Additional Information

Tabled document received from Mr Adrian Lake, Biodiesel Association of Australia

COMPARITIVE DIESEL vs BIODIESEL PRICES PRE and POST 1 JULY 2006

Today On Road Diesel		Today On Road Biodiesel		Biodiesel Differential
Gate Price:	1.32	Gate Price	1.25	
Rebate	0.18	Rebate	0.18	
			<hr/>	
Final Price	1.14	Final Price	1.07	0.07

From 1 July 2006 On Road Diesel		From 1 July 2006 On Road Biodiesel		
Gate Price:	1.32	Gate Price	1.25	
Rebate	0.38	Rebate (EGCS)	0.18	
Road User Charge	0.20	Road User Charge	0.20	
			<hr/>	
Final Price	1.14	Final Price	1.27	0.13

Today Off Road Diesel		Today Off Road Biodiesel (B49)		
Gate Price:	1.32	Gate Price	1.28	
Rebate	0.38	Rebate	0.38	
			<hr/>	
Final Price	0.94	Final Price	0.90	0.04

From 1 July 2006 Off Road Diesel		From 1 July 2006 Off Road Biodiesel (B49)		
Gate Price:	1.32	Gate Price	1.28	
Rebate	0.38	Rebate	0.00	
			<hr/>	
Final Price	0.94	Final Price	1.28	0.34

It is clear that under the changes scheduled to take effect from 1 July 2006, the benefit to the on road biodiesel user reduces from 7 cents per litre to an additional cost of 13 cents per litre.

In the case of the off road user of biodiesel the position changes from a 4 cents per litre advantage to a 34 cents per litre cost disadvantage making it totally unviable to use biodiesel in ANY off road situation.

Cost for B49 has been calculated with diesel at \$1.32 and biodiesel gate price of \$1.25

**Senate Economics Legislation Committee
Inquiry into the provisions of the Fuel Tax Bill 2006**

Tabled Document 7

By: Mr Adrian Lake, Biodiesel Association
of Australia

Date: 5 June 2006

Biodiesel Plants

Company	Location	State	Capacity ML
Australian Biodiesel Group	Berkley Vale	NSW	40 built
	Narangba	QLD	160 built
Australian Renewable Fuels	Adelaide	SA	45 built
	Picton	WA	45 nearing completion
Axiom Energy	Melbourne	VIC	70
Biodiesel Industries Australia	Rutherford	NSW	12 built
Biodiesel Producers	Albury	NSW	60 under construction
EcoTech Biodiesel	Narangba	QLD	45 built
Fuji Fuels	Thomastown	VIC	10
Future Fuels	Moama	NSW	25 built
Midwest BD		WA	60
		VIC	60
		NSW	60
Natural Fuels Australia	Darwin	NT	150
Riverina Biofuels	Deniliquin	NSW	100
Vilo Assets (Smorgon)	Melbourne	VIC	60

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These are plants and projects known to BAA
which are either operational or planned to operate prior to 2008