Excise Tariff Amendment (Fuel Indexation) Bill 2014 [and related Bills]

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Economics Section

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Date introduced: 19 June 2014
House: House of Representatives
Portfolio: Treasury; Immigration and Border Protection

Commencement: The amendments apply indexation to duty on domestically manufactured and imported fuel with effect from 1 August 2014. The provisions which establish a special account for the net additional revenue from the reintroduction of fuel indexation apply from 1 July 2015.

Links: The links to the Bills, their Explanatory Memoranda and second reading speeches can be found on the Bills’ home pages for the Excise Tariff Amendment (Fuel Indexation) Bill 2014, the Customs Tariff Amendment (Fuel Indexation) Bill 2014, the Fuel Indexation (Road Funding) Special Account Bill 2014 and the Fuel Indexation (Road Funding) Bill 2014.

The links to the Bills and references to their Explanatory Memoranda and second reading speeches are set out in the Appendix to this Bills Digest.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/
### Glossary
The following abbreviations and acronyms are used throughout this Bills Digest:

<table>
<thead>
<tr>
<th>Abbreviations</th>
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<tr>
<td>COAG</td>
<td>Council of Australian Governments</td>
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<td>CPI</td>
<td>Consumer Price Index</td>
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<td>CT Act</td>
<td>Customs Tariff Act 1995</td>
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<tr>
<td>CTA Act</td>
<td>Customs Tariff Amendment (Taxation of Alternative Fuels) Act 2011 (Cth)</td>
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<td>Customs Indexation Bill</td>
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<td>ETA 1921</td>
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<td>ETA 2011</td>
<td>Excise Tariff Amendment (Taxation of Alternative Fuels) Act 2011 (Cth)</td>
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<td>FMA Act 1997</td>
<td>Financial Management and Accountability Act 1997 (Cth)</td>
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<td>PGPA 2013 Act</td>
<td>Public Governance, Performance and Accountability Act 2013 (Cth)</td>
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<tr>
<td>Road Funding Bill</td>
<td>Fuel Indexation (Road Funding) Bill 2014</td>
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<td>Special Account Bill</td>
<td>Fuel Indexation (Road Funding) Special Account Bill 2014</td>
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Purpose of the Bill

The Excise Tariff Amendment (Fuel Indexation) Bill 2014 (Excise Indexation Bill) and three associated Bills (the Bills) provide for the re-introduction of biannual indexation by the consumer price index of excise and excise equivalent customs duty for all fuels except aviation fuel, crude oil and condensate.

Structure of the package of Bills

The Excise Indexation Bill and the Customs Tariff Amendment (Fuel Indexation) Bill 2014 (Customs Indexation Bill) amend the Excise Tariff Act 1921 (ETA 1921) and the Customs Tariff Act 1995 (CT Act) to index the rate of excise and excise equivalent customs duty applying to fuels to assist in funding road infrastructure.

The Fuel Indexation (Road Funding) Special Account Bill 2014 (Special Account Bill) establishes a special account to ensure that the net additional revenue from the reintroduction of fuel indexation is used for road infrastructure funding.

The Fuel Indexation (Road Funding) Bill 2014 (Road Funding Bill) amends the Fuel Tax Act 2006 (FT Act) to ensure that taxpayers generally use the same indexed rate of duty that was payable on the fuel for determining the amount of their fuel tax credits.

Background

Tax on fuel in Australia was first introduced in the early 1900s as customs and excise duties on fuels such as petrol and diesel to fund the development and maintenance of Australia’s road network. In this respect, the inclusion of the special account in the package of Bills aligns with this early purpose.

The taxation of fuel was reviewed as part of the Australia’s Future Tax System Review in 2008, which recommended:

Revenue from fuel tax imposed for general government purposes should be replaced over time with revenue from more efficient broad-based taxes. If a decision were made to recover costs of roads from road users through fuel tax, it should be linked to the cost of efficiently financing the road network, less costs that can be charged directly to road users or collected through a network access charge. Fuel tax should apply to all fuels used in road transport on the basis of energy content, and be indexed to the CPI. Heavy vehicles should be exempt from fuel tax and the network access component of registration fees if full replacement charges are introduced.

As part of the 2014–15 Budget, the Government announced that it would reintroduce the biannual indexation of fuel excise (and customs duty equivalents) to changes in the consumer price index (CPI). The main fuels affected will be petrol and diesel, but LPG will also be impacted. For liquid fuels, indexation will apply to the

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6. Ibid.
7. Ibid.
general rate of excise (and customs duty) which is now 38.143 cents per litre (cpl). For these fuels, indexation will add about one cpl to this rate in 2014–15. Fuel excise indexation was introduced in 1983. It was abolished in 2001, amidst public concerns about high fuel prices and the impact of the introduction of the GST, on the one hand, and the need to maintain the commitment to a Budget surplus on the other. Accordingly, indexation of excise on petroleum fuels was removed from 1 August 2001. In the wake of the removal of fuel excise indexation in 2001, the Australian Competition and Consumer Commission (ACCC) was responsible for monitoring the reduction.

Committee consideration

**Senate Economics Legislation Committee**

The package of Bills was referred to the Senate Economics Legislation Committee for inquiry and report. Submissions closed 27 June 2014. Details of the inquiry are at the [inquiry webpage](#).

In its report, which was tabled on 7 July 2014, the Committee recommended that the Bill be passed. In concluding, the Committee noted that concerns about the hypothecation of funds to road transport and not to other types, such as public transport, be seen in the context of the Commonwealth’s broader commitment to transport infrastructure. It also noted that the proposal maintains the integrity of the fuel tax credit scheme, is relatively simple and that concerns about distributional impacts should be seen in the context that increases will be in line with CPI.

In their dissenting report, Australian Labor Party Senators oppose the Bills as no distributional analysis has been undertaken, with concerns about the proportion of revenue raised in regional and outer urban areas compared to the amount of funding for easing inner city congestion. Their report also criticises the failure to publicly commit to allocating a fixed proportion of revenue raised specifically for building roads or to allocate any proportion of revenue raised specifically for funding public transport infrastructure.

The dissenting report by the Australian Greens also opposes the Bills. In particular, the Greens do not support a special fund for roads that ‘locks in future governments to spending billions on roads by 2030 at the expense of desperately needed public transport investment’. Impacts on pollution and congestion were a key concern. The Greens are critical of the fuel tax credits received by mining companies.

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Policy position of non-government parties/independents

On 24 June 2014, the Australian Greens announced they would not support fuel excise indexation, although some members of the New South Wales Greens have since indicated a push to revisit the party’s stance. The Australian Labor Party indicated it would not support the Bills on 24 June 2014. The Palmer United Palmer indicated it would not support fuel excise indexation on 27 June 2014.

Position of major interest groups

The National Farmers’ Federation’s (NFF) position is that should the Senate decide to support the Bills to index fuel excise, no changes should be made to current arrangements that index Fuel Tax Credits (FTCs) in line with movements in excise rates. The Minerals Council of Australia expressed similar views.

The Australian Trucking Association supports indexation of fuel excise. The Sustainable Transport Coalition of WA (STCWA) strongly supports fuel excise indexation, and strongly recommends it be hypothecated to walking, cycling and public transport as well as for roads in general. The Bus Industry Confederation sees opportunities for the Road Funding Bill to ‘promote an admixture of investment in road and rail public transport infrastructure and travel behaviour change projects in addition to the intended purpose of returning revenue collected from fuel excise indexation to road expenditure’. The Australasian Railway Association supports indexation of fuel excise but only if current rail rebates are increased in line with Consumer Price Index increases and part of the additional revenue generated through fuel excise indexation is invested in rail and public transport infrastructure, not solely dedicated to roads.

The National Roads and Motorists’ Association is opposed to the reintroduction of fuel excise indexation, but if it is introduced, seeks a more ‘transparent’ arrangement than provided in the Bills, to ensure that net additional revenue is invested into road and public transport Infrastructure.

Financial implications

The measure is estimated to result in a gain to revenue over the forward estimates period of $2,197.5 million comprising:

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<tr>
<td></td>
<td>$157.5m</td>
<td>$375m</td>
<td>$675m</td>
<td>$990m</td>
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Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights can be found at page 19 of the Explanatory Memorandum to the Bill. As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bills’ compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bills are compatible.

The Parliamentary Joint Committee on Human Rights considers that the Bills do not give rise to human rights concerns.

Key issues

Estimated additional weekly costs for households from indexation of excise on fuel

An Australian Bureau of Statistics survey in 2012 estimated a couple with dependent children spent $69 per week on petrol and $11 on diesel. At the time the average price for petrol was 144.3 cents per litre and for diesel 150.6 cents per litre, suggesting such households used an average of 47.8 litres of petrol and 7.3 litres of diesel a week. With indexation expected to add one cent per litre to the excise, this indicates indexation would add 55.1 cents per week to the household expenses of a couple with dependent children. The equivalent estimate for all types of households is 40.7 cents per week.

Monitoring of Australian fuel prices and industry

The Australian Competition and Consumer Commission (ACCC) monitors retail prices of unleaded petrol, diesel and LPG in capital cities and various regional areas, and investigates issues of concern. If directed by Government, the ACCC also monitors prices, costs and profits relating to the supply of unleaded petroleum products in Australia.

Indexation, fuel tax credit and road user charge

Fuel tax credits provide a credit for the excise or customs duty included in the price of fuel used in certain eligible vehicles and equipment used in relevant business activities. Fuel used in light vehicles (gross vehicle mass of 4.5 tonnes or less) is not eligible for a fuel tax credit. For applicable heavy vehicles (with a gross vehicle mass of more than 4.5 tonnes), the fuel tax credit is reduced by a ‘road user charge’ (currently 26.14 cpl), effectively reducing the fuel tax credit for fuel used in a heavy vehicle for travelling on public roads.

Without any change in the rate of excise, the road user charge for heavy vehicles is likely to reach the fuel excise ceiling in five to seven years, thereby limiting the cost recovery capability of the charge to the excise rate of 38.143 cpl.

Fuel excise revenue and expenditure on roads

As noted by the Australia’s Future Tax System Review and Infrastructure Partnerships Australia, the current fuel excise recovers more revenue than the funds spent on the road network by the Commonwealth.

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40. Note: if household usage of fuel has remained the same, the current amount spent on fuel per week is expected to be higher, due to higher prices. For the week ending 22 June 2014, the average petrol price was 155.7 cents per litre and the average for diesel was 159.0 cents per litre: Australian Institute of Petroleum (AIP), ‘Average weekly retail prices for diesel fuel’, AIP website, accessed 24 June 2014.
47. Ibid., p. 22.
Over 78 per cent of the $5,703 million infrastructure budget for 2014–15 is to be spent on roads.\(^{48}\) By contrast, fuel excise is estimated to raise $18,340 million in cash terms in 2014–15.\(^{49}\) An estimated $18,478 million was expended on roads by the three levels of government in 2011–12.\(^{50}\) However, Commonwealth and state estimates of expenditure in this aggregate may include grants to other levels of government for roads expenditure.\(^{51}\)

**Key provisions**

**Indexation**

Currently, section 6A of the *ETA 1921* provides for the indexation of alcohol duty rates.\(^{52}\) Items 1 to 7 of Schedule 1 of the Excise Indexation Bill amend section 6A to provide generally for indexation of CPI indexed rates of duty. Due to the definition of ‘CPI indexed rate’ inserted into subsection 6A(10) by item 7, the rates of duty indexed under this section will be various types of alcohol-based products and fuel. Item 3 of Schedule 1 repeals the formula for working out the new rate of duty on each indexation day in subsection 6A(1) and replaces it with:

\[
\text{CPI Indexed rate on the day before the indexation day}^{53} \times \text{Indexation factor}^{54} \text{ for the indexation day.}
\]

Apart from replacing the current reference to the ‘alcohol duty rate on the day before the indexation day’ with a general reference to the ‘CPI indexed rate on the day before the indexation day’, the amended formula is the same as that currently used.

**Item 7 of Schedule 1** inserts a definition of CPI indexed rate into subsection 6A(10) to mean:

- a rate of duty set out in Item 1, 2 or 3\(^{55}\) of the Schedule to the *ETA 1921*
- a rate of duty for certain subitems in Item 10\(^{56}\) of the Schedule to the *ETA 1921* or
- for certain other subitems in Item 10,\(^{57}\) the rate set out in step three at subsection 6G(1) of the *ETA 1921*.

The Customs Indexation Bill proposes corresponding changes to the *CT Act*.\(^{58}\)

Fuel indexation will operate in a similar way to the indexation of the rates of excise and excise equivalent customs duty applying to alcohol. Indexation occurs on 1 February and 1 August each year and is based on changes in the CPI as published by the Australian Statistician.\(^{59}\) The indexed rates are gazetted via a notice in accordance with subsection 6A(9) of the *ET Act* and subsection 19(9) of the *CT Act* respectively.\(^{60}\)

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\(^{50}\) Bureau of Infrastructure, Transport and Regional Economics (BITRE), *‘Key Australian infrastructure statistics’*, BITRE website, p. 9, accessed 7 July 2014.

\(^{51}\) Data provided are estimates of expenditure on roads by each level of government from their own sources rather than the total expenditure on roads by that level of government. Commonwealth and state estimates of expenditure may include grants to other levels of government for expenditure on roads: Bureau of Infrastructure, Transport and Regional Economics (BITRE), *Yearbook 2013: Australian infrastructure statistics*, BITRE, p. 316, accessed 7 July 2014.

\(^{52}\) *Excise Tariff Act 1921* (Cth), accessed 27 June 2014.

\(^{53}\) *Indexation day* is defined in subsection 6A(10) of the *Excise Tariff Act 1921* to mean 1 February and 1 August (hence indexation will occur biannually).

\(^{54}\) Indexation factor is calculated in accordance with subsection 6A(3) of the *Excise Tariff Act 1921*: index number for the most recent reference quarter before the indexation day ÷ index number for the base quarter. Subsection 6A(10) defines the reference quarter to mean the June quarter or the December quarter and provides a method to determine the base quarter.

\(^{55}\) These deal with various types of alcohol-based products.

\(^{56}\) These deal with various types of fuel.

\(^{57}\) Namely, that deal with blended fuels.

\(^{58}\) Items 1 to 7 of Schedule 1 of the Customs Indexation Bill.


\(^{60}\) *Customs Tariff 1995* (Cth), accessed 27 June 2014.
Rounding
The duties for fuel are currently expressed to five decimal places of a dollar. However, under proposed section 6AAA, the result of the amount worked out using the formula in proposed subsection 6A(1) is rounded to three decimal places of a dollar (that is, one decimal place of a cent). For example, the existing excise rate of 38.143 cpl would be rounded down to 38.1 cpl under the proposed arrangements.

In addition to this change, amendments in Schedule 4 of the Road Funding Bill 2014 propose to round down any existing road user charge to one decimal place of a cent from 1 August 2014 and to limit any new charge being set to one decimal place of a cent. This would see, for example, the existing rate of 26.14 cpl rounded down to 26.1 cpl.

This justification for these change to rounding by the Government, which were not previously announced, is that it ‘simplifies the fuel tax credit claim calculation for claimants’.

The Customs Fuel Indexation Bill proposes corresponding changes to the CT Act.

Special Account

What are special accounts?
A special account is an amount of money that has been allocated to a purpose, but which remains in the Consolidated Revenue Fund (CRF), and which may only be released from the CRF for that purpose. This is sometimes known as ‘hypothecation’. The appropriation authority is sections 20 and 21 of the Financial Management and Accountability Act 1997 (FMA Act). The new financial framework established by the Public Governance, Performance and Accountability Act 2013 (PGPA 2013 Act) contains equivalent provisions.

The type of appropriation provided by a special account is a special appropriation. The appropriation amount is limited to the balance of the special account, and this remains available until the special account is abolished.

As at 1 January 2014, there were 162 special accounts managed across government agencies. The reasons for setting up special accounts were summarised by the Department of Finance in 2003 to include:

[Special Accounts] provide a useful method of delivering some government programs, particularly ones funded by, say, indirect taxes or other compulsory imposts, contributions by other governments or discretionary contributions by members of the community. Special Accounts allow money in the CRF to be set aside for particular spending purposes, and moneys in a Special Account can only be spent for the purposes nominated.

... Special Accounts may be used for proper trustee type moneys, where the Commonwealth is holding money on behalf of other parties, so genuine trustees’ moneys can fit into the Special Account definition... Also, where we are holding moneys on behalf of the States and for other similar uses, Special Accounts are an appropriate vehicle as well.

A Special Account has been used previously for excise, in relation to the Australian Land Transport Development Act 1988. Since the early 1990’s, road funding has been set as part of the budget process, discontinuing the practice of hypothecating a proportion of fuel excise to roads.

61. See subsection 6G(1) and Excise Tariff Act 1921, Schedule, table item 10.
63. Proposed sections 19AAA of the CT Act.
69. Treasury, History of fuel taxation in Australia, op. cit.
**Fuel Indexation (Road Funding) Special Account**

The Special Account Bill establishes the Fuel Indexation (Road Funding) Special Account for the purposes of the *FMA Act* and for related purposes. The *PGPA Act 2013* became effective on 1 July 2014 and replaced special account provision in the *FMA Act*. The Road Funding Bill, therefore, makes consequential amendments to the Fuel Indexation (Road Funding) Special Account Bill 2014 (when enacted) to reflect the entry into force of the *PGPA 2013 Act*.

**Subclause 9(1)** of the Special Account Bill provides that the purpose of the Fuel Indexation (Road Funding) Special Account is to ensure that amounts equal to the *fuel indexation amount* are transferred to the *COAG Reform Fund* in order to provide funding to the states and territories for expenditure in relation to Australian road infrastructure investment.

**Clause 8** provides for credits to the Special Account to be made by determinations by the Treasurer, once per year. **Subclause 8(3)** provides that the determination is a legislative instrument, but section 42 of the *Legislative Instruments Act 2003* (which deals with disallowance) will not apply. As a result, it will not be possible for either the House of Representatives or the Senate to disallow determinations made by the Minister. **Clauses 10, 11 and 12** provide for amounts to be debited from the Special Account and grants to be channelled through the *COAG Reform Fund*.

**Fuel Tax Credit calculation**

Fuel Tax Credit is calculated using the duty rates applicable on the day set out subsection 43–5(2A) of the *Fuel Tax Act 2006 (FT Act)*. Currently this provides that after 30 June 2015, for most claimants, this is the first day of the *tax period*. **Item 1 of Schedule 4** of the of the Road Funding Bill repeals this subsection and sets out that the relevant day for calculating the rate of fuel tax, or the applicable grant or subsidy, will be the day the fuel was acquired or imported, or, if the fuel was manufactured and entered for home consumption, the day it was entered. This amendment seeks to ensure that the same indexed rate is used for determining the amount of excise or excise-equivalent customs duty payable on the fuel and the amount of the fuel tax credit.

**Conclusion**

The reintroduction of indexation will allow a road user charge to continue to rise beyond the current fixed excise rate over the long term.

Fuel excise raises significantly more revenue than the Commonwealth spends on roads. However, the package of Bills will provide an estimated $2,197.5 million over the forward estimates, which will be dedicated to road funding.

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70. Essentially, subclause 9(2) provides the method for calculating the *fuel indexation amount* as the revenue attributable to indexation of fuel tax on or after 1 August 2014 less offsets from this revenue pursuant to the *Energy Grants (Cleaner Fuels) Scheme Act 2004*, the *Fuel Tax Act 2006*, or the Ethanol Production Grants Scheme.

71. *COAG Reform Fund* is defined at clause 4 to mean the COAG reform fund established by section 5 of the *COAG Reform Fund Act 2008 (Cth)*, accessed 9 July 2014.

72. Fuel Indexation (Road Funding) Special Account Bill, subclause 8(4).


75. Within the meaning of the *Excise Act 1901 (Cth)*, accessed 9 July 2014.

### Appendix: Excise Tariff Amendment (Fuel Indexation) Bill 2014 [and related Bills]

<table>
<thead>
<tr>
<th>Name of Bill with link to homepage</th>
<th>Purpose of the Bills(^77)</th>
<th>Reference in the Explanatory Memorandum to detailed explanation of the new law(^78)</th>
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</thead>
<tbody>
<tr>
<td><strong>Excise Tariff Amendment (Fuel Indexation) Bill 2014</strong></td>
<td>The Bill amends the <em>Excise Tariff Act 1921</em> to index the rate of excise and provide for the rounding of the CPI indexed rate to one decimal place. It also amends the <em>Excise Tariff Amendment (Taxation of Alternative Fuels) Act 2011</em> to change the duty rates of certain gas fuels.</td>
<td>Paragraphs 1.10 to 1.19 at pages 7 to 11. Paragraphs 1.56 to 1.57 at pages 16 to 17.</td>
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<tr>
<td><strong>Customs Tariff Amendment (Fuel Indexation) Bill 2014</strong></td>
<td>The Bill amends the <em>Customs Tariff Act 1995</em> to index the rate of excise-equivalent customs duty and provide for the rounding of the CPI indexed rate to one decimal place. It also amends the <em>Customs Tariff Amendment (Taxation of Alternative Fuels) Act 2011</em> to change the duty rates of certain gas fuels.</td>
<td>Paragraphs 1.10 to 1.19 at pages 7 to 11. Paragraphs 1.56 to 1.57 at pages 16 to 17.</td>
</tr>
<tr>
<td><strong>Fuel Indexation (Road Funding) Special Account Bill 2014</strong></td>
<td>The Bill establishes the Fuel Indexation (Road Funding) Special Account for the purposes of the <em>Financial Management and Accountability Act 1997</em> and for related purposes.</td>
<td>Paragraphs 1.20 to 1.48 at pages 11 to 15. See also paragraph 1.60 at page 17.</td>
</tr>
<tr>
<td><strong>Fuel Indexation (Road Funding) Bill 2014</strong></td>
<td>The Bill amends the <em>Fuel Tax Act 2006</em> to ensure the fuel tax credits scheme continues to operate as intended. It also makes consequential amendments to the Fuel Indexation (Road Funding) Special Account Bill 2014 on the <em>Public Governance, Performance and Accountability Act 2013</em> coming into effect. The Bill also makes consequential amendments to the Energy Grants (Cleaner Fuels) Scheme.</td>
<td>Paragraphs 1.49 to 1.55 at pages 15 to 16. Paragraph 1.61 at page 17. Paragraph 1.58 at page 17.</td>
</tr>
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\(^77\) The purpose of each Bill is as stated in the home page of the Bill.

\(^78\) There is only one Explanatory Memorandum to the package of four Bills, which is accessible from the homepage for each Bill. The references to paragraphs and pages are to those of this single document.