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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EXCISE TARIFF AMENDMENT (CONDENSATE) BILL 2011
EXCISE LEGISLATION AMENDMENT (CONDENSATE) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)

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Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
Commissioner	Commissioner of Taxation
Excise Legislation Bill	Excise Legislation Amendment (Condensate) Bill 2011
Excise Tariff Bill	Excise Tariff Amendment (Condensate) Bill 2011
Rankin Trend	'Rankin Trend' condensate production area
VOLWARE price	Volume Weighted Average of Realised prices

General outline and financial impact

Excise Tariff Amendment (Condensate) Bill 2011

Excise Legislation Amendment (Condensate) Bill 2011

The Excise Tariff Amendment (Condensate) Bill 2011 amends the *Excise Tariff Act 1921*, to clarify and confirm the area encompassed by the 'Rankin Trend' condensate production area, located within the North West Shelf project area.

The Excise Legislation Amendment (Condensate) Bill 2011 amends the *Petroleum Excise (Prices) Act 1987*, to clarify that failure to provide petroleum producers with written notification setting out the terms of a Volume Weighted Average of Realised prices determination does not affect the making of the determination.

Together, these amendments ensure the Crude Oil Excise regime applies to condensate production from the North West Shelf project area as intended following the decision to remove the excise exemption applying to condensate from 13 May 2008.

Date of effect: These amendments apply from midnight (by legal time in the Australian Capital Territory) on 13 May 2008, consistent with the original measure.

These amendments are consistent with the Government's original announcement of this measure. They apply retrospectively to remove any uncertainty about the operation of the law since it came into effect.

Proposal announced: This measure was announced in the 2011-12 Budget on 10 May 2011.

Financial impact: Nil. The measure affirms the current application of the Crude Oil Excise regime to condensate production and has no revenue impact.

Compliance cost impact: Nil.

Chapter 1

Crude Oil Excise: Technical amendments

Outline of chapter

1.1 The Excise Tariff Amendment (Condensate) Bill 2011 (Excise Tariff Bill) amends the *Excise Tariff Act 1921*, to clarify the area encompassed by the 'Rankin Trend' condensate production area (Rankin Trend) located within the North West Shelf.

1.2 The Excise Legislation Amendment (Condensate) Bill 2011 (Excise Legislation Bill) amends the *Petroleum Excise (Prices) Act 1987*, to confirm that failure to provide petroleum producers with written notification setting out the terms of a Volume Weighted Average of Realised prices (VOLWARE price) determination does not affect the validity of the determination.

1.3 Together, these amendments ensure the Crude Oil Excise regime applies to condensate produced from the North West Shelf and entered for home consumption as intended following the removal of the condensate excise exemption from 13 May 2008.

Context of amendments

1.4 The Crude Oil Excise is set as a percentage of the value of stabilised crude petroleum oil or condensate produced from prescribed areas located in the North West Shelf project area (situated off the coast of Western Australia) and onshore Australia.

1.5 In the 2008-09 Budget, the Government announced its decision to remove the Crude Oil Excise exemption that had applied to condensate production since 1977. This measure was implemented through the *Excise Legislation Amendment (Condensate) Act 2008*, and the *Excise Tariff Amendment (Condensate) Act 2008*, with effect from midnight (legal time in the Australian Capital Territory) on 13 May 2008. The measure was estimated to raise \$2.5 billion in revenue in the three years to 2011-12.

1.6 The Crude Oil Excise rates applying to condensate production are:

- zero for production in a financial year of 500 megalitres or less;
- ten per cent for production in a financial year of between 501 and 600 megalitres;
- fifteen per cent for production in a financial year of between 601 and 700 megalitres;
- twenty per cent for production in a financial year of between 701 and 800 megalitres; and
- thirty per cent for production in a financial year of over 800 megalitres.

1.7 The excise rates apply to the cumulative annual production entered for home consumption from individual ‘condensate production areas’ that are prescribed by the Chief Executive Officer (in this case, the Commissioner of Taxation (Commissioner)) through by-law.

1.8 The ‘price’ of condensate, used to determine excise duties, is known as the VOLWARE price. A VOLWARE price is required to be determined each month by the Minister, or a person authorised by the Minister, within a specified time. Written notices setting out the terms of VOLWARE price determinations are required to be provided to the relevant condensate producer(s), although no time for doing so is specified.

1.9 In November 2008, the Commissioner prescribed the Rankin Trend (with operation from midnight on 13 May 2008), together with a number of other areas, as prescribed condensate production areas. The Rankin Trend is located within the North West Shelf and encompasses a number of spatially related reservoirs. It was prescribed as a single condensate production area on the basis that the Rankin Trend reservoirs formed a single field, based on advice from Geoscience Australia.

1.10 Doubt has been raised regarding the validity of the by-law prescribing Rankin Trend both as a condensate production area, and in relation to the formalities of the VOLWARE price determinations.

1.11 The first doubt relates to the area the Rankin Trend encompasses, with claims that it is of uncertain size and could be interpreted as being significantly larger than the area which was intended when the condensate production area was prescribed.

1.12 In relation to VOLWARE price determinations, it has been suggested that, if a written notice setting out the terms of a determination is not provided to producers the determination itself will be of no lawful effect.

Summary of new law

1.13 The Excise Tariff Bill amends the *Excise Tariff Act 1921* to address any uncertainty regarding the area encompassed by the Rankin Trend. It does this by introducing a statutory definition of 'Rankin Trend', which encompasses those reservoirs which Geoscience Australia advises comprise a field. Additional reservoirs which commence production may be added to the Rankin Trend by regulation, where the Minister is satisfied that they form part of the same field as a reservoir or groups of reservoirs within the Rankin Trend.

1.14 The Excise Legislation Bill amends the *Petroleum Excise (Prices) Act 1987* to clarify that failure to provide relevant producers of excisable crude petroleum oil and/or condensate with a written notice setting out the terms of a VOLWARE price determination does not affect the making of a VOLWARE price determination.

1.15 These amendments apply from midnight (by legal time in the Australian Capital Territory) on 13 May 2008, consistent with the original measure.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
The Rankin Trend is defined within the <i>Excise Tariff Act 1921</i> as a prescribed condensate production area, being the area including the relevant reservoirs. Further reservoirs may be included within the Rankin Trend via regulation where the Minister is satisfied that they form part of the same field as a reservoir or groups of reservoirs mentioned within the definition of 'Rankin Trend', having regard to the efficient exploitation of the resource.	The Rankin Trend is prescribed in an Excise by-law, by name only.

<i>New law</i>	<i>Current law</i>
Failure to provide a written notice setting out the terms of a VOLWARE price determination does not affect the making of the determination.	The provision requiring the giving of a written notice setting out the terms of a VOLWARE price determination does not state whether the failure to give a notice affects the validity of the determination.

Detailed explanation of new law

Rankin Trend condensate production area

1.16 The Excise Tariff Bill addresses concerns that the Rankin Trend is not sufficiently certain to describe a condensate production area for the purposes of the Crude Oil Excise regime. It does this by repealing the current definition of prescribed condensate production area and inserting a new definition which identifies Rankin Trend as a ‘prescribed condensate production area’. [Schedule 1, items 2 and 3 of the Excise Tariff Bill, subsection 6CA(1) of the Excise Tariff Act 1921]

1.17 The **Rankin Trend** is defined as the area including the reservoirs or groups of reservoirs known as North Rankin; Perseus; Searipple; Goodwyn; Keast/Dockrell and Echo/Yodel. [Schedule 1, item 3 of the Excise Tariff Bill, subsection 6CA(1) of the Excise Tariff Act 1921]

1.18 The Excise Tariff Bill also makes amendments to allow for the Rankin Trend to be extended by regulation to include additional reservoirs or groups of reservoirs. This may occur where new reservoirs commence production, or are known to have commenced production, at a time after the introduction of the new definition of ‘prescribed condensate production area’. This is achieved through inserting a regulation-making power within the Excise Tariff Act 1921 [Schedule 1, item 4 of the Excise Tariff Bill]. Reservoirs or groups of reservoirs may only be specified by regulation where the Resources Minister is satisfied that the reservoirs or groups of reservoirs are part of the same field as a reservoir or group of reservoirs within the Rankin Trend [Schedule 1, item 3 of the Excise Tariff Bill, subsection 6CA(1) of the Excise Tariff Act 1921]. Whether the reservoirs or groups of reservoirs are part of the same field will be based on geological evidence.

1.19 In exercising the discretion, the Resources Minister must also consider what effect, if any, specifying the reservoirs, or groups of reservoirs, may have on the efficient exploitation of the resource related to the reservoirs or groups of reservoirs [Schedule 1, item 3 of the Excise Tariff Bill, subsection 6CA(1) of the Excise Tariff Act 1921]. Relevant factors may include

the timing and/or commercial viability of proposed developments, energy security and good oilfield practice, and will be informed by expert advice, including from the relevant petroleum producers.

1.20 A regulation specifying a reservoir or group of reservoirs may be expressed to take effect prior to it being registered under that Act. However, the Excise Tariff Bill will not allow the making of regulations that apply retrospectively, to make a person liable to an offence or civil penalty. This is consistent with the current prescription of condensate production areas by by-law, which may also be expressed to take effect before the date it is registered [*Schedule 1, item 3 of the Excise Tariff Bill, subsection 6CA(13) of the Excise Tariff Act 1921*]. Subsection 12(3) of the *Legislative Instruments Act 2003* allows regulations to apply retrospectively if the enabling legislation so provides. This amendment ensures that excise duty is payable on condensate produced from a reservoir prior to it becoming part of the Rankin Trend.

1.21 Section 6AB of the *Excise Tariff Act 1921* specifies that the price used to determine excise duties payable on stabilised crude petroleum and condensate is the final VOLWARE price or, if not yet determined, the interim VOLWARE price in respect of production obtained from production areas that are, under by-laws, prescribed production areas. The Excise Tariff Bill also amends this section to omit the words, ‘under by-laws’ in order to avoid doubt regarding its application to the Rankin Trend prescribed condensate production area. [*Schedule 1, item 1 of the Excise Tariff Bill, section 6AB of the Excise Tariff Act 1921*]

Notification of VOLWARE prices

1.22 VOLWARE prices are prices determined each month for stabilised crude petroleum oil and condensate respectively, and used to calculate the Crude Oil Excise duty payable on production from prescribed production areas. The price is determined by dividing the sum of all transaction prices received for sales of excisable crude petroleum oil or condensate by the total quantity of the respective products entered for home consumption for the month.

1.23 The *Petroleum Excise (Prices) Act 1987* establishes the process for setting VOLWARE prices. Under subsections 7(2) and (3) of the Act, the relevant Minister, or person authorised by the Minister, is required to determine both an interim VOLWARE price and a final VOLWARE price within specified time limits. Section 8 of the *Petroleum Excise (Prices) Act 1987* requires that a written notice be provided to the relevant stabilised petroleum oil or condensate producer setting out the terms of VOLWARE price determinations. The Act does not prescribe a time within which a notice must be provided.

1.24 The Excise Legislation Bill amends section 8 of the *Petroleum Excise (Prices) Act 1987* to clarify that failure to provide a written notice to the relevant producer(s) regarding VOLWARE price determinations does not invalidate the determination. [*Schedule 1, items 1 and 2 of the Excise Legislation Bill, section 8 of the Petroleum Excise (Prices) Act 1987*]

1.25 Subsection 12(1) of the *Petroleum Excise (Prices) Act 1987* allows a producer to seek a review of a reviewable decision within the period of 28 days of it first coming to the notice of the producer, or a further period allowed by the decision maker. The determination of a final VOLWARE price is a reviewable decision. The Excise Legislation Bill amends subsection 12(1) to allow producers the further option of seeking a review within 28 days of receiving written notice of a final VOLWARE price determination. [*Schedule 1, item 3 of the Excise Legislation Bill, subsection 12(1) of the Petroleum Excise (Prices) Act 1987*]

Application and transitional provisions

Application and savings provisions

1.26 The amendments made in the Excise Tariff Bill to the *Excise Tariff Act 1921* will apply from midnight (by legal time in the Australian Capital Territory) on 13 May 2008 [*Schedule 1, subitem 5(1) of the Excise Tariff Bill*]. Similarly, the application date for amendments made in the Excise Legislation Bill is also midnight (by legal time in the Australian Capital Territory) on 13 May 2008 [*Schedule 1, item 4 of the Excise Legislation Bill*].

1.27 The application date of the amendments aligns with that of the original measure that removed the Crude Oil Excise exemption on condensate production. The amendments address uncertainties that have arisen following the commencement of the original measure. They affirm the current operation application of Crude Oil Excise to condensate production and have no revenue impact.

1.28 The Excise Tariff Bill includes application provisions that preserve the prescription of condensate production areas contained in Excise By-Law 156, with the exception of the Rankin Trend. [*Schedule 1, subitems 5(2) to (4) and item 3 of the Excise Tariff Bill*]

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Excise Tariff Amendment (Condensate) Bill 2011

Schedule 1: Amendments

<i>Bill reference</i>	<i>Paragraph number</i>
Item 1 of the Excise Tariff Bill, section 6AB of the <i>Excise Tariff Act 1921</i>	1.20
Items 2 and 3 of the Excise Tariff Bill, subsection 6CA(1) of the <i>Excise Tariff Act 1921</i>	1.15
Item 3 of the Excise Tariff Bill, subsection 6CA(13) of the <i>Excise Tariff Act 1921</i>	1.19
Item 3 of the Excise Tariff Bill, subsection 6CA(1) of the <i>Excise Tariff Act 1921</i>	1.16, 1.17, 1.18
Item 4 of the Excise Tariff Bill	1.17
Subitem 5(1) of the Excise Tariff Bill	1.25
Subitems 5(2) to (4) and item 3 of the Excise Tariff Bill	1.27

Excise Legislation Amendment (Condensate) Bill 2011

Schedule 1: Amendments

<i>Bill reference</i>	<i>Paragraph number</i>
Items 1 and 2 of the Excise Legislation Bill, section 8 of the <i>Petroleum Excise (Prices) Act 1987</i>	1.23
Item 3 of the Excise Legislation Bill, subsection 12(1) of the <i>Petroleum Excise (Prices) Act 1987</i>	1.24
Item 4 of the Excise Legislation Bill	1.25

