Excise Legislation Amendment (Condensate) Bill 2011

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Excise Legislation Amendment (Condensate) Bill 2011

Date introduced: 6 July 2011  
House: House of Representatives  
Portfolio: Treasury  
Commencement: On Royal Assent  

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through [http://www.aph.gov.au/bills/](http://www.aph.gov.au/bills/). 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/](http://www.comlaw.gov.au/).

Purpose

The main purpose of the Excise Legislation Amendment (Condensate) Bill 2011 (the Bill) is to clarify that price determinations, used to calculate the excise payable on condensate, are valid even though notices containing the terms of the determinations, have not been given to condensate producers as required by the Petroleum Excise (Prices) Act 1987.  

Background

Constitutional framework

The taxation of petroleum reflects the constitutional division of responsibility between the Commonwealth and the states. Projects fall into three categories:

- offshore projects: they are located outside the three nautical mile boundary and so fall within the Commonwealth’s jurisdiction. Offshore projects incur:
  - either the petroleum resources rent tax (PRRT) or
  - crude oil excise and Commonwealth royalties

- coastal waters projects: they lie between the low tide water mark and the three nautical mile boundary

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1. Condensate is a form of hydrocarbon that is a liquid at standard temperature and pressure, and is obtained as part of the process of extracting crude oil and or natural gas.

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— coastal water projects are subject to Commonwealth crude oil excise and state royalties
— the states share these royalties with the Commonwealth, and

• land-based onshore projects
— they are subject to the crude oil excise and state royalties.

**Condensate excise**

In the 2008-09 Budget, the Government announced that crude oil excise would be extended to include condensate produced in areas not subject to the PRRT. The *Excise Tariff Amendment (Condensate) Act 2008* implemented this decision.

Excise on condensate is calculated as a percentage of the volume-weighted average (VOLWARE) of free-on-board prices. Table 1 shows the condensate excise rates.

<table>
<thead>
<tr>
<th>Annual sales (in megalitres)#</th>
<th>Rate (per cent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 500</td>
<td>0</td>
</tr>
<tr>
<td>501 to 600</td>
<td>10</td>
</tr>
<tr>
<td>601 to 700</td>
<td>15</td>
</tr>
<tr>
<td>701 to 800</td>
<td>20</td>
</tr>
<tr>
<td>Over 801</td>
<td>30</td>
</tr>
</tbody>
</table>

Source: *Excise Tariff Amendment (Condensate) Act 2008*

# A megalitre is a million litres

**Petroleum Excise (Prices) Act 1987**

The *Petroleum Excise (Prices) Act 1987* (Petroleum Prices Act) deals with the calculation of VOLWARE prices. The Act requires, among other things, that condensate producers provide certain price information, that the Minister issue a determination of VOLWARE prices, and that the Minister provide a written notice of a price determination to the relevant producer.

The Assistant Treasurer and Minister for Financial Services and Superannuation, Mr B Shorten, stated in the second reading speech that:

> It has been suggested that if a written notice setting out the terms of a price determination is not provided to producers then the determination itself is invalid.³

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The Bill seeks to clarify that a notice is valid even if it has not been given to the producer.

**Committee consideration**


**Financial implications**

The Explanatory Memorandum claims that there are no financial implications. 4

**Key provisions**

**Schedule 1—Amendments**

**Part 1—Amendments**

Section 8 of the Petroleum Prices Act deals with notification of prices. **Item 2** adds to section 8 of the Petroleum Prices Act **proposed subsection 8(2)**. This provides that failure to provide a notification—as required by subsection 8(1)—does not affect a determination’s validity.

Section 12 of the Petroleum Prices Act contains provision for the review of certain decisions. **Item 3** repeals subsection 12(1) of that Act and substitutes new provisions. **Proposed subsection 12(1)** gives to an oil producer, who is dissatisfied with a reviewable decision, the right to ask the decision maker to review the decision. Such requests must be made by notice and within specified time periods or within a time period that the decision-maker allows [**proposed subsection 12(1A)**].

**Concluding comments**

The provisions in the Bill are technical in nature. They are required because producers have not been given notices of determinations as required under the Petroleum Prices Act.

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4. Explanatory Memorandum, op. cit., p. 3.

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While the amendment ensures that the price determination remains valid, a question arises as to whether steps should also be taken to ensure that a time frame is in place within which a notice should be provided. Otherwise, questions of procedural fairness may arise.