

The Excise Tariff Amendment (Condensate) Bill 2011 and the Excise Legislation Amendment (Condensate) Bill 2011

Introduction

- 1.1 On 6 July 2011 the Selection Committee asked the Standing Committee on Agriculture, Resources, Fisheries and Forestry (the Committee) to inquire into and report on:
- the Excise Tariff Amendment (Condensate) Bill 2011; and
 - the Excise Legislation Amendment (Condensate) Bill 2011.
- 1.2 The Bills ‘clarify and confirm the application of excise to condensate’¹ and:
- ... ensure that 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 2008.²

1 Treasury, *Submission 1*, p. 1.

2 Explanatory Memorandum, Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011, p. 3.

The inquiry process

- 1.3 A media release advertising the inquiry and seeking submissions was issued on 11 May 2011. The Committee wrote to relevant Ministers to advise them of the inquiry and invite them to make a submission.
- 1.4 In addition, the Committee also sought submissions from interested industry bodies, including the Australian Petroleum Production and Exploration Association (APPEA) and Woodside Petroleum³, both of whom indicated in writing to the Committee that they had no comment on the Bills or would not be making a submission.
- 1.5 The Committee received 2 submissions details of which can be found at Appendix A.
- 1.6 The submissions raised no significant issues, and scrutiny of the Bills by the Committee did not identify any significant issues that could be tested through a public hearing. In addition, the industry groups impacted by the legislation indicated to the Committee that they had no comment on the Bills. Therefore, the Committee determined not to conduct a public hearing and that the report would be drafted based on the Bills, the explanatory memoranda and the submissions alone.
- 1.7 Full details of the inquiry including the Bills and explanatory memoranda, the submission and the report can be found on the Committee's webpage.⁴

Purpose and overview of the Bills

Policy history

- 1.8 Condensate⁵ production has been exempted from the Crude Oil Excise since 1977. However, in the 2008-09 Budget, the Government announced its decision to remove the exemption with effect from midnight (legal time in the Australian Capital Territory (ACT)) on 13 May 2008.⁶ At that time, the Treasurer, the Hon Wayne Swan MP, stated that:

3 As detailed later in the report, the North West Shelf project is operated by the North West Shelf Joint Venture Partners and Woodside Petroleum is the project operator.

4 <<http://www.aph.gov.au/house/committee/arff/condensate/index.htm>>

5 According to the Treasury submission condensate is a light crude oil.

6 Explanatory Memorandum, Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011, p. 5.

The measure will increase the return to the Australian community from allowing private interests to extract non-renewable energy resources located in the North West Shelf project area and onshore.⁷

- 1.9 The Crude Oil Excise applies to eligible crude oil and condensate production from coastal waters, onshore areas, and the North West Shelf project area (exploration permit areas WA-1-P and WA-28-P) in Australian waters.⁸ According to APPEA:

Crude oil excise is payable on production from individual prescribed production areas that are subject to the provisions of the *Excise Tariff Act 1921*. Excise is calculated as a percentage of the volume-weighted average of realised free-on-board prices (VOLWARE) made from a designated region.⁹

- 1.10 The removal of the excise exemption resulted in some uncertainty with regards to elements central to the operation of the Crude Oil Excise regime,¹⁰ specifically:

- uncertainty over the area that the Rankin Trend covers, with concerns raised that it is of uncertain size and could be significantly larger than what was intended when the condensate production area was prescribed;¹¹ and
- the suggestion that failure to provide written notice of the terms of a Volume Weighted Average of Realised (VOLWARE) price determination to producers may result in the determination being unlawful.¹²

7 Hon W. Swan MP, Media Release, 13 May 2008 accessed from <<http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/045.htm&pageID=&min=wms&Year=&DocType=0>> on 26 July 2011.

8 Treasury, *Submission 1*, p. 1.

9 Australian Petroleum Production and Exploration Association (APPEA) accessed from <<http://www.appea.com.au/policy/tax-a-commercial/crude-oil-excise.html>> on 26 July 2011.

10 Treasury, *Submission 1*, p. 1.

11 Explanatory Memorandum, Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011, p. 3.

12 Explanatory Memorandum, Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011, p. 4.

Rankin Trend

- 1.11 In order to enable the 2008-09 Budget measure to operate the Commissioner of Taxation prescribed a number of areas as condensate production areas for the purposes of the *Excise Tariff Act 1921* through Excise By-Law No. 156, which had effect from 13 May 2008.¹³ This By-Law prescribed two condensate production areas within the North West Shelf, the Rankin Trend and Angel.
- 1.12 The Rankin Trend is an area which contains a number of spatially related reservoirs, and was prescribed as a single condensate production area based on advice from Geoscience Australia that the reservoirs formed a single field.¹⁴
- 1.13 According to Treasury:
- The North West Shelf project is held by the North West Shelf Joint Venture (NWSJV). The NWSJV comprises Woodside Petroleum (the project operator), Shell, Chevron, BHP Billiton, and Japan Australia LNG (MIMI).¹⁵

VOLWARE prices

- 1.14 VOLWARE prices are determined each month and are used to calculate the excise duty payable on production from a prescribed production area.
- 1.15 The process for determining the VOLWARE price is contained in the *Petroleum Excise (Prices) Act 1987* and it requires the Minister, or person authorised by the Minister, to determine interim and final prices within a specified time-frame.¹⁶ Section 8 of the *Petroleum Excise (Prices) Act 1987* requires that :
- ... written notices setting out the terms of a VOLWARE determination be provided to the relevant producers. The Act does not prescribe a timeframe within which this notice must occur.¹⁷

13 Treasury, *Submission 1*, p. 2.

14 Treasury, *Submission 1*, p. 3.

15 Treasury, *Submission 1*, p. 3.

16 Treasury, *Submission 1*, p. 3.

17 Treasury, *Submission 1*, p. 3.

Excise Tariff Amendment (Condensate) Bill 2011

- 1.16 The Excise Tariff Amendment (Condensate) Bill 2011 amends the *Excise Tariff Act 1921* to clarify the area encompassed by the Rankin Trend located within the North West Shelf. Specifically the Bill introduces:
- ... 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 group of reservoirs within the Rankin Trend.¹⁸
- 1.17 The Bill clarifies the current application of the Crude Oil Excise regime to condensate production and has no revenue impact.¹⁹
- 1.18 The measure was announced in the 2010-11 Budget and will apply retrospectively from midnight (legal time in the ACT) on 13 May 2008.²⁰
- 1.19 The Bills include provisions that preserve the prescription of condensate production areas contained in Excise By-Law 156 with the exception of the Rankin Trend.²¹

18 Explanatory Memorandum, Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011, p. 7.

19 Explanatory Memorandum, Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011, p. 3.

20 Explanatory Memorandum, Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011, p. 3.

21 Explanatory Memorandum, Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011, p. 10.

Figure 1 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.

Source Explanatory Memorandum, *Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011*, p. 7.

Excise Legislation Amendment (Condensate) Bill 2011

- 1.20 The Excise Legislation Amendment (Condensate) Bill 2011 amends the *Petroleum Excise (Prices) Act 1987* to provide clarification of the requirements for written notification of VOLWARE pricing decisions. Specifically the proposed amendments spell out:

... that failure to provide petroleum producers with written notification setting out the terms of a [VOLWARE] prices determination does not affect the making of the determination.²²

- 1.21 As with the Excise Tariff Amendment (Condensate) Bill 2011, the Bill clarifies the current application of the Crude Oil Excise regime to condensate production and has no revenue impact.²³

- 1.22 The measure was announced in the 2010-11 Budget and will apply retrospectively from midnight (legal time in the ACT) on 13 May 2008.²⁴

22 Explanatory Memorandum, *Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011*, p. 3.

23 Explanatory Memorandum, *Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011*, p. 3.

24 Explanatory Memorandum, *Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011*, p. 3.

Figure 2 Comparison of key features of new law and current law

<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.

Source Explanatory Memorandum, *Excise Tariff Amendment (Condensate) Bill 2011 and Excise Legislation Amendment (Condensate) Bill 2011*, p. 8.

Committee conclusion

- 1.23 The Committee was interested in the level of consultation that had occurred with industry and other stakeholders in the development of the Bills. According to the submission from the Department of Resources, Energy and Tourism, Treasury consulted relevant government departments and Woodside Petroleum as the representative of the NWSJV project.²⁵ However, the Treasury submission did not detail the process by which the Bills were developed. Further, due to the lack of comment by industry the Committee could only assume that industry did not have strong objections to the consultation process.
- 1.24 For future Bills inquiries, the Committee argues that it is relevant for submissions from departments to include the process by which the Bills were developed, including the level of consultation and any concerns that may have been raised throughout the process. This information will assist the Committee in ensuring the development of robust legislation.

Recommendation 1

The Committee recommends that submissions from lead departments to future Bills inquiries detail the process by which the Bill was developed including the consultation that has occurred and concerns that have been raised in relation to the Bill.

25 Department of Resources, Energy and Tourism, *Submission 2*, [p. 1].

- 1.25 In addition to its own scrutiny and consideration, the Committee relies on the process of submissions and public hearings to draw out specific concerns or issues with proposed legislation. In this instance, a lack of submissions and the resulting decision not to proceed with a public hearing, coupled with the fact that the Committee did not identify any specific concerns relating to the Bills, meant that the inquiry process has not highlighted any specific concerns that may exist in relation to these Bills. In addition, the Bills are of a technical nature and seek to clarify uncertainties over existing legislation rather than the development of new legislation and do not raise additional revenue.
- 1.26 The Committee is supportive of any efforts that are undertaken to provide clarity and certainty around legislation, especially when it concerns such an important industry. The Committee considers that clarification is the central aim of the two Bills reviewed and that this aim has been achieved.
- 1.27 Therefore, the Committee endorses the Bills.

Recommendation 2

The Committee recommends that the House of Representatives pass the Bills.

**Hon Dick Adams MP
Committee Chair
10 August 2011**