

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

EXCISE TARIFF LEGISLATION AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Industry, Science
and Technology, Senator the Hon Peter Cook)

EXCISE TARIFF LEGISLATION AMENDMENT BILL 1994

OUTLINE

The purpose of this Bill is to amend to *Excise Tariff Act 1921* (the Act) to incorporate Excise Tariff Proposal No. 4 of 1993 into the Act and to incorporate Excise Tariff Proposal No. 1 of 1994 into the *Excise Tariff Amendment Act (No. 2) 1993*.

Excise Tariff Proposal No. 4 of 1993 proposes to amend the Act to correct an anomaly in the granting of an exemption from the payment of excise on exempt offshore oil.

In 1987, the Government introduced several changes to the petroleum taxation arrangements designed to increase investment in petroleum exploration and development. A key element of these changes was the exemption of the first 4767.3 megalitres, which approximates to 30 million barrels, of crude oil produced from onshore fields and new offshore projects from the payment of excise. This exempt crude oil was defined as "exempt onshore oil" and "exempt offshore oil" respectively. Provisions were also included to assist in identifying onshore fields for the purposes of granting the exemption to exempt onshore oil. No provisions were included to identify an offshore project and there is no other relevant statutory or industry definition of the term. Uncertainty exists as to the scope of the exemption from the payment of excise on crude oil produced from offshore projects.

Excise Tariff Proposal No. 4 of 1993 proposes to amend the Act to eliminate this uncertainty and to provide for consistent treatment of exempt onshore and offshore oil under the Act while still fulfilling the intention of the original 1987 policy. Specifically it proposes to:

- (i) substitute the current definition of exempt offshore oil with a definition that provides that exempt offshore oil is crude oil produced from an offshore field; and
- (ii) insert provisions to identify an offshore field for the purposes of granting an exemption from the payment of excise on crude oil produced from an offshore field.

In addition, it is proposed that provision will also be made for the Minister for Primary Industries and Energy to make guidelines to be taken into account by the Comptroller-General when prescribing a field for the purposes of both exempt onshore oil and exempt offshore oil.

Excise Tariff Proposal No. 4 of 1993 was tabled in the House of Representatives on 15 December 1993.

Excise Tariff Proposal No. 1 of 1994 proposes to correct cross references in the *Excise Tariff Amendment Act (No. 2) 1993* to the *Customs and Excise Legislation Amendment Act 1993*. The need for this correction arose due to Senate amendments to the Customs and Excise Legislation Amendment Bill 1993 (the CELA Bill) which resulted in this Bill being re-numbered. The commencement provisions in the Excise

Tariff Amendment Bill (No. 2) 1993 (ETA Bill) referred extensively to provisions in the CELA Bill. When the CELA Bill was renumbered, the cross references in the ETA Bill to the CELA Bill were not altered to take account of this re-numbering.

A Notice of Intention to propose an Excise Tariff alteration to the ETA Bill was gazetted by the Comptroller-General of Customs on 20 January 1994 and the subsequent proposal was tabled in the House of Representatives on 9 February 1994.

Financial Impact Statement

The proposed amendments in this Bill have no direct financial impact.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

1. This is a machinery clause which provides for the Act to be cited as the *Excise Tariff Legislation Amendment Act 1994*.

Clause 2 - Commencement

2. Subclause 2(1) provides for the Royal Assent commencement of the following provisions:

- clauses 1 and 2, which are the short title and commencement provisions;
- clause 4, which cites the *Excise Tariff Act 1921* as the Principal Act to which Part 2 relates; and
- clause 7, which cites the *Excise Tariff Amendment Act (No. 2) 1993* as the Principal Act to which Part 3 relates.

3. Subclause 2(2) provides for clauses 4, 5 and 6 as having commenced on 1 January 1994. This is the date of commencement of Excise Tariff Proposal No. 4 of 1993.

4. Subclause 2(3) provides for clause 8 as having commenced on 24 December 1994. This is the date of commencement of Excise Tariff Proposal No. 1 of 1994.

PART 2 - AMENDMENTS OF THE EXCISE TARIFF ACT 1921

Clause 3 - Principal Act

5. This provision identifies the *Excise Tariff Act 1921* as the Principal Act for the purposes of Part 2.

Clause 4 - Definitions

6. This clause amends subsection 3(1) of the Principal Act by:
- i) inserting the word "onshore" after "particular exempt" in the definition of "exempt onshore oil (subclause 4(a))". This provides that exempt onshore oil means stabilised crude petroleum produced from an exempt onshore field and is consequential upon the new definition of "exempt offshore oil".
 - iii) omitting the present definition of "exempt offshore oil" and substituting a new definition which provides that "exempt offshore oil" means the first 4767.3 megalitres (approximately 30 million barrels) of stabilised crude petroleum oil

produced from a particular exempt offshore field from which petroleum oil was not produced before 1 July 1987 (subclause 4(b)).

This definition provides that exempt offshore oil status is granted to the first 4767.3 megalitres of stabilised crude petroleum production from an exempt offshore field and is consistent with the granting of exempt onshore oil status. Exempt offshore oil must be produced from an exempt field from which petroleum oil was not produced before 1 July 1987 but no similar restriction applies in respect of exempt onshore oil;

- iv) omitting the present definitions of "exempt area" and "exempt field" (subclause 4(c)), which are for the purposes of the present definition of "exempt onshore oil" which is being amended by subclause 4(b); and
- v) inserting new definitions of "exempt offshore area", "exempt offshore field", "exempt onshore area" and "exempt onshore field" (subclause 4(d)). These new definitions are for the purposes of the new definition of "exempt offshore oil" and the amended definition of "exempt onshore oil".
 - "Exempt offshore area" is defined as a production area within the meaning of section 5B of the Principal Act that is outside the outer limits of the territorial sea of Australia and that is not, and has not been, a prescribed source. This definition is for the purposes of the definition of "exempt offshore field".
 - "Exempt offshore field" is defined as a field that is prescribed by By-law and consists of, or encompasses, an exempt offshore area or 2 or more exempt offshore areas. This definition is for the purposes of the new definition of "exempt offshore oil".
 - "Exempt onshore area" is defined as a production area within the meaning of section 5B of the Principal Act that is in a State or Territory or inside the outer limits of the territorial sea of Australia and that is not, or has not been, a prescribed source. This definition is for the purposes of the definition of "exempt onshore field".
 - "Exempt onshore field" is defined as a field that is prescribed by By-law and consists of, or encompasses, an exempt onshore area or 2 or more exempt onshore areas. This definition is for the purposes of the definition of "exempt onshore oil".

Clause 4 - Insertion of new section

- 7. This clause inserts a new section 3A after section 3 of the Principal Act.
- 8. New subsection 3A(1) provides that the Minister for Primary Industries and Energy may, by signed instrument, make guidelines to be taken into account by the Comptroller in making By-laws prescribing a field for the purposes of the definition of "exempt onshore field" or "exempt offshore field".

- By-laws are made by the Comptroller-General of Customs under section 165 of the *Excise Act 1901*.

9. New subsection 3A(2) provides that in making the By-laws for the purposes of the definitions of "exempt onshore field" or "exempt offshore field", the Comptroller must have regard to guidelines in force at the time of making the By-laws.

10. New subsection 3A(3) provides that the Ministerial guidelines are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Clause 6 - Amendment of Schedule

11. This clause amends the Schedule to the Principal Act by:

- i) inserting "onshore" after "exempt" in sub-item 17(B) (subclause 6(a)); and
- ii) inserting "onshore" after "exempt", wherever occurring, in sub-item 17(C) (subclause 6(b)).

This is a consequence of the amendments to the definition of "exempt onshore oil" (see subclause 4(a)).

PART 3 - AMENDMENTS OF THE EXCISE TARIFF AMENDMENT ACT (NO.2) 1993

Clause 7 - Principal Act

12. This provision identifies the *Excise Tariff Amendment Act (No.2) 1993* as the Principal Act for the purposes of this Part.

Clause 8 - Commencement

13. This provision amends section 2 of the Principal Act by omitting subsection (2), (3) and (4) and substituting new subsections to correct cross references to the *Customs and Excise Legislation Amendment Act 1993* in the Principal Act.

14. New subsection (2) provides that sections 3, 4 and 5 and paragraphs 6(a), (b), (f), (g), (h) and (j) commence on the day on 1 April 1994.

15. New subsection (3) provides that paragraphs 6(d) and (e) commence on 21 January 1994 which was the day after the Notice of Intention to propose and Excise Tariff Alteration was gazetted.



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