

***EBL 2019/2 - Explanatory statement -***



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## Explanatory Statement

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### Excise By-Law - Prescribed Condensate Production Area

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#### General Outline of Instrument

1. This instrument is made under section 165 of the *Excise Act 1901*.
2. This instrument prescribes condensate production areas for the purposes of section 6CA of the *Excise Tariff Act 1921* (Excise Tariff Act).
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### Date of effect

5. The instrument commences on the day after it is registered on the Federal Register of Legislation.

#### What is this instrument about

6. Subitem 21.3 of the Schedule to the Excise Tariff Act imposes a duty of excise on certain condensate to be “Free, or if higher the amount of duty worked out under section 6CA.”
7. Section 6CA of the Excise Tariff Act provides that a “**Prescribed condensate production area**” means “a condensate production area prescribed by by-laws (which, without limiting the generality of the foregoing, may be a relevant accumulation, a well, an oil field or a gas field)”.
8. This By-Law is required to prescribe condensate production areas for the purposes of section 6CA of the Excise Tariff Act.

#### What is the effect of this instrument

9. This instrument prescribes each condensate production area for the purposes of the definition of the term “*prescribed condensate production area*” contained in subsection 6CA (1) of the Excise Tariff Act.
10. By prescribing condensate production areas, this instrument makes condensate produced from those areas subject to a duty of excise to be “Free or if higher the amount of duty worked out under section 6CA” of the Excise Tariff Act.
11. Compliance Cost Impact: Minor – There will be no or minimal impacts for both implementation and ongoing compliance costs. The legislative instrument is minor or machinery in nature.

## **Background**

12. This instrument repeals and replaces *Excise By-Law 156* (F2008L04516), registered on 27 November 2008 (previous instrument).
13. This instrument is substantially the same as the previous instrument that it replaces. An entity that satisfied the requirements of the previous instrument will satisfy the requirements of this instrument.

## **Consultation**

14. Subsection 17(1) of the *Legislation Act 2003* requires that the CEO undertake an appropriate level of consultation that is reasonably practicable to undertake before making a legislative instrument
15. Broad consultation was undertaken on the draft determination and draft explanatory statement. These documents were published on the ATO Legal Database in October 2018 inviting feedback and comments during the two week consultation period. The ATO Legal Database is available to the general public through [ato.gov.au](http://ato.gov.au) and is referred to by stakeholders such as tax professionals and industry.
16. Targeted consultation was also undertaken for a period of two weeks. Draft copies of the determination and explanatory statement were sent to the peak national body for petroleum producers and explorers in Australia and its members.
17. No comments were received from this consultation process.

## **Legislative references:**

*Acts Interpretation Act 1901*

*Excise Act 1901*

*Excise Tariff Act 1921,*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Legislation Act 2003*

## **Statement of compatibility with Human Rights**

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Excise By-Law - Prescribed Condensate Production Area**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

This instrument prescribes petroleum condensate production areas to enable producers to calculate their liability to excise tariffs.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms as it assists petroleum condensate producers to calculate their liability to excise tariffs. It is considered to be minor or machinery in nature and continues the current approach.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.