

# ***LI 2022/10 - Explanatory statement -***



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## Explanatory Statement

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# Excise (Prescribed Condensate Production Area) By-Law 2022

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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. This instrument commences on the day after it is registered on the Federal Register of Legislation.
6. This instrument will sunset ten years after commencement. A ten year period is required to provide certainty to businesses on their obligations.

### What is the effect of this instrument

7. 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.
8. 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.
9. Compliance Cost Impact: Minor – There will be no additional regulatory impacts for both implementation and ongoing compliance costs from this Instrument. The legislative instrument is minor or machinery in nature.

### Background

10. 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".
11. 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)".
12. A by-law is required to prescribe condensate production areas for the purposes of section 6CA of the Excise Tariff Act.

13. This instrument repeals and replaces *Excise By-Law – Prescribed Condensate Production Area* (F2019L00411), registered on 26 March 2019 (previous instrument).

14. The Minister for Resources and Water recently determined that Tidepole reservoir is separate from an existing production area (the Rankin Trend). As a consequence, this instrument adds Tidepole reservoir as an additional prescribed condensate production area in the Carnarvon Basin. Aside from this addition, 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.

15. In accordance with *Excise By-Law No. 114* (F2009C00659), the first 4767.3 megalitres of production from the Tidepole reservoir will be exempt from excise duty. Once that production threshold is met, excise duty may apply depending upon annual production levels.

### **Consultation**

16. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken.

17. Targeted consultation was undertaken for a period of 2 weeks. Copies of the draft legislative instrument and explanatory statement were sent to the operator of the Tidepole reservoir for comment and feedback.

18. No comments were received.

### **Legislative references**

*Acts Interpretation Act 1901*

*Excise Act 1901*

*Excise Tariff Act 1921*

*Legislation Act 2003*

*Legislation (Exemptions and Other Matters) Regulation 2015.*

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

Table item 16 of section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* states that a by-law is not subject to disallowance where it is made under section 165 of the *Excise Act 1901* for the purposes of the Excise Tariff within the meaning of section 4 of that Act. This by-law falls within that item and is therefore not subject to disallowance. Paragraph 15J(2)(f) of the *Legislation Act 2003* exempts this instrument from the requirement to contain a statement of compatibility with human rights.