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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EXCISE TARIFF AMENDMENT BILL 1996

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Small Business and Consumer Affairs,
the Honourable Geoff Prosser, MP)

EXCISE TARIFF AMENDMENT BILL 1996

OUTLINE

The purpose of this Bill is to insert into the *Excise Tariff Act 1921* (the Principal Act) the definition of "prescribed division", which is currently contained in an Excise By-Law. The definition is necessary for determining the periods of a year for the purposes of calculating the excise duty on crude petroleum oil under sections 6B ("old" oil), 6C ("new" oil) and 6D ("intermediate" oil) of the Principal Act.

The need for this legislation has arisen as a result of recent advice received from the Attorney-General's Department concerning crude oil excise receipts under the above three sections of the Principal Act which rely upon the By-law definition. It was suggested for clarity to transfer the definition into the Principal Act, with effect from 1 July 1983, being the date that section 6B was inserted into the Principal Act.

The transfer of the By-law definition and its retrospective commencement is proposed as a technical precaution pursuant to the Attorney-Generals Department's advice, to ensure there is no doubt about the validity of past revenue collections under the definition (item 2 of Schedule 1 to the Bill refers).

The Bill also effects a technical drafting amendment to the Principal Act relating to gender neutral language, consistent with continuing Commonwealth drafting policy to make appropriate amendments where necessary in Commonwealth legislation to achieve a gender neutral result (item 1 of Schedule 1 to the Bill refers).

FINANCIAL IMPACT STATEMENT

The principal amendment in this Bill concerning the transfer of the definition of "prescribed division" from the Excise By-law into the Principal Act will not result in any additional outlays or revenue to the Commonwealth. The amendment will however remove any possible doubt about the validity of past revenue collections on crude oil, which since 1984/85 on "new" crude oil have totalled approximately \$1.9 billion.

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NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for this Bill to be cited as the *Excise Tariff Amendment Act 1996*.

Clause 2 - Commencement

This clause provides for the Royal Assent commencement of all the provisions of the Bill, except for item 2 of Schedule 1.

Subclause 2(2) provides for a retrospective commencement of 1 July 1983 for item 2 of Schedule 1. This was the date when the provision being amended, section 6B of the *Excise Tariff Act 1921* (the Principal Act), was originally inserted into the Principal Act. The reason for fixing that date is to ensure that past excise duty collections under section 6C of the Act are sufficiently linked to the first mentioned section to put them beyond possible legal challenge (item 2 of Schedule 1 refers).

Clause 3 - Schedule 1

This clause is the formal enabling provision for Schedule 1, providing that the Act specified in that Schedule (i.e. the *Excise Tariff Act 1921*) is amended in accordance with the applicable items of that Schedule (items 1 and 2 refer). The clause also provides that the other items of the Schedule have effect according to their terms. This is a standard enabling clause for transitional, savings and application items in amending legislation. This Bill, however, has no such items.

Schedule 1
Amendment of the Excise Tariff Act 1921 (the Principal Act)

Item 1 - Subsection 6A(2)

This item amends subsection 6A(2) by adding the feminine pronoun "her" into the subsection after the male pronoun "him", which is currently in the subsection. This is a technical drafting change in line with the Commonwealth's drafting policy relating to gender neutral language.

The House of Representatives Committee on Legal and Constitutional Affairs, in its report of 21 July 1993 entitled "Clearer Commonwealth Law - Report of the Enquiry into Legislative Drafting by the Commonwealth", commented on the fact that many Commonwealth Acts still had not been amended to include feminine pronouns, or to deal with words such as "Chairman". During the recent prorogation of Parliament for the 1996 federal election, the Office of Parliamentary Council used the break to identify remaining Acts and draft appropriate amendments to achieve a gender neutral result. This proposed amendment is to one such provision identified as part of that exercise.

Item 2 - Subsection 6B(1) (definition of prescribed division)

This item omits the current definition of "prescribed division" contained in section 6B (which in turn further defines the phrase by reference to another instrument, being an Excise By-Law (No. 96)), and replaces this two tiered approach by transferring the By-Law definition into the Principal Act.

The taxation arrangements for crude oil have been administered since 1 July 1983 through the Principal Act using a combination of provisions in the Act and by-laws made under the head of power contained in subsection 165(2) of the *Excise Act 1901*, including Excise By-Law No. 96. The policy at the time was to levy excise duty only on "old" oil, i.e. that discovered prior to 17 September 1975. This was accommodated by the insertion of section 6B into the Principal Act.

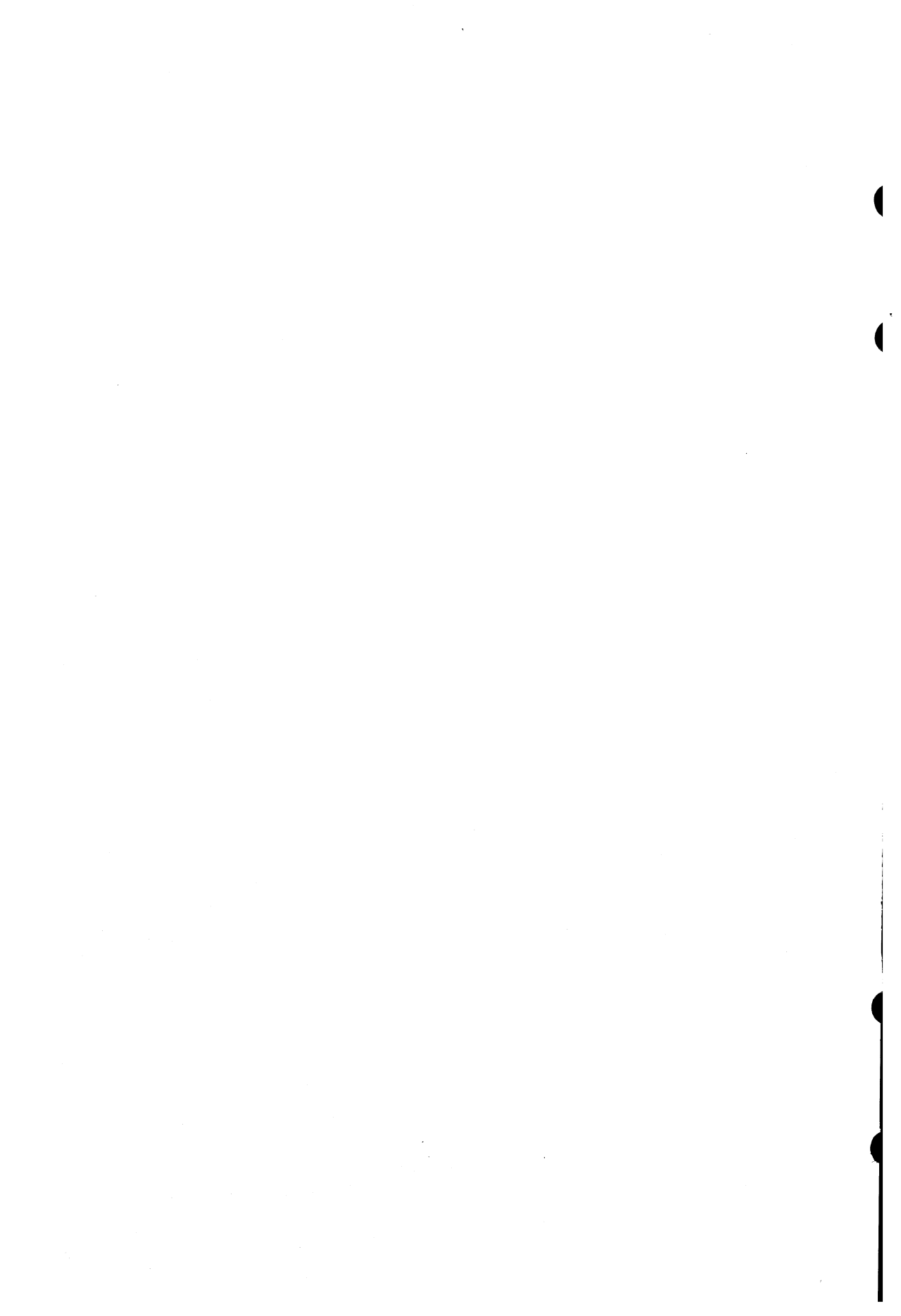
In effect, the Principal Act required crude oil to be entered for home consumption and duty paid during particular divisions of a financial year. Each of such divisions is a "prescribed division" which is defined in subsection 6B(1) in relation to a financial year to mean "... one of 36 divisions of that year of approximately equal length as prescribed by Departmental By-laws". Departmental Excise By-law No. 96 prescribes those divisions as specific 8, 9, 10 or 11 day periods of calendar months.

In April 1984 new initiatives were announced to apply from 1 July 1984 to impose an excise on "new" oil, i.e. that discovered after 17 September 1975. These initiatives provided significant concessions to "new" oil over the "old" oil rates and were designed to encourage increased activity in oil exploration. The vehicle selected for delivering this new measure was again a combination of provisions of the Principal Act (sections 6C ("new" oil) and 6D ("intermediate" oil) and Excise By-laws).

The same "prescribed division" mechanism for calculating the excise duty payable during a particular period of a year was again selected for "new" and "intermediate" oil by a specific cross reference in each of those sections of the Principal Act to the definition for that phrase appearing in section 6B of the Principal Act. A by-law similar to Excise By-Law No. 96 was not however expressly prescribed for these 2 new sections, as it was thought that Excise By-Law No. 96 would necessarily apply to these particular sections by virtue of the cross reference in the sections to the definition already appearing in section 6B.

Recent advice from the Attorney-General's Department supports the view that for the purposes of section 6C ("new" oil) and section 6D ("intermediate" oil), reliance can indeed be placed on Excise By-Law No. 96, as that by-law effectively forms part of the definition of "prescribed division" in section 6B, and that definition is specifically imported into the other 2 sections by virtue of the cross references to section 6B.

However, so that this position is made absolutely clear, the Attorney-General's Department has recommended that the By-law "definition" be transferred into section 6B of the Principal Act, to remove any possibility of a contrary view, or any question as to the validity of past revenue collections under the various sections.







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