

# EXPOSURE DRAFT



EXPOSURE DRAFT

## Petroleum Excise (Prices) Regulations 2018

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove  
Governor-General

By His Excellency's Command

Scott Morrison [DRAFT ONLY—NOT FOR SIGNATURE]  
Treasurer

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## 1 Name

This instrument is the *Petroleum Excise (Prices) Regulations 2018*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 April 2018.	1 April 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Petroleum Excise (Prices) Act 1987*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## 5 Definitions

In this instrument:

**acquisition**, for an input tax credit, has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**applicable whole cost** has the meaning given by subsection 10(5).

**applicable whole price** has the meaning given by subsection 10(3).

**associate** has the same meaning as in paragraph 1(k) of Schedule 1 to the *Petroleum Revenue Act 1985*.

**condensate producer** means an oil producer as defined in subsection 4(1) of the Act, as modified in accordance with subsection 5A(3) of the Act.

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**delivered by pipeline** means the loading of oil or condensate into a pipeline otherwise than for the purpose of loading on a ship.

**due date**, for payment of the sale price under a contract, means:

- (a) if a period is provided under the contract within which that payment is to be made—the last day of that period; or
- (b) otherwise—the day identified under the contract for that payment.

**effective credit day**, for a transaction comprising the sale under a contract of a quantity of crude petroleum oil or condensate, means the day immediately before any period allowed under the contract for payment of the sale price.

**excisable quantity cost** has the meaning given by subsection 10(4).

**excisable quantity price** has the meaning given by subsection 10(2).

**f.o.b. contract** means a contract for the sale of a quantity of crude petroleum oil by the oil producer, or condensate by the condensate producer, under which:

- (a) the oil or condensate is to be loaded on a ship or ships; and
- (b) the producer bears none of the costs of the following:
  - (i) freight;
  - (ii) insurance;
  - (iii) demurrage at the port of destination;
  - (iv) lighterage at the port of destination;
  - (v) wharfage at the port of destination;
  - (vi) heating of the oil or condensate;
  - (vii) bunkers;for the transport of that oil or condensate to the purchaser after the oil or condensate is loaded.

**GST** has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**input tax credit** has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**maximum indicator interest rate**, for a day, means the highest of the range of rates of interest per annum current on that day quoted by the Reserve Bank, on the basis of reports by each bank regarded by the Reserve Bank as a major trading bank operating in Australia in respect of overdrafts of \$100,000 or more.

**mid-rate**, for a foreign currency for a day, is the rate, expressed as an amount in that currency that is equivalent to the Australian dollar, quoted by the Reserve Bank as at 4 pm (by legal time in the Australian Capital Territory) on that day.

**number of credit days allowed**, under a contract for the sale of crude petroleum oil or condensate, means the number of days in any period within which payment of the sale price is to be made under the contract. The contract need not specify the duration of that period in terms of days.

Example 1: That period specified in contract A is 21 days. Paragraph 9(1)(a) would apply to the contract as no more than 30 credit days are allowed under the contract.

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Example 2: That period specified in contract B is 5 weeks. Paragraph 9(1)(b) would apply to the contract as more than 30 credit days are allowed under the contract.

**relevant delivery price** has the meaning given by subsection 10(1).

**sale price:**

- (a) for a contract for the sale of a quantity of crude petroleum oil by an oil producer, means the total amount payable to the producer under that contract for that quantity of oil; and
- (b) for a contract for the sale of a quantity of condensate by a condensate producer, means the total amount payable to the producer under that contract for that quantity of condensate.

**supply**, for an amount of GST payable, has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**the Act** means the *Petroleum Excise (Prices) Act 1987*.

## 6 Oil producing regions, production areas and VOLWARE commencement dates—stabilised crude petroleum oil

- (1) This section applies for the purposes of the definitions of **oil producing region**, **production area** and **VOLWARE commencement date** in subsection 4(1) of the Act, to the extent that those definitions relate to stabilised crude petroleum oil.
- (2) If only one production area is mentioned in an item of the table in subsection (5), that production area is the whole of the oil producing region mentioned in the table item.
- (3) If more than one production area is mentioned in an item of the table in subsection (5), those production areas are each part of, and together make up, the oil producing region mentioned in the table item.
- (4) The date specified in an item of the table in subsection (5) is the VOLWARE commencement date for excisable crude petroleum oil obtained from the oil producing region mentioned in the table item.
- (5) The table is as follows:

<b>Oil producing regions, production areas and VOLWARE commencement dates</b>			
<b>Item</b>	<b>Oil producing region</b>	<b>Production areas</b>	<b>VOLWARE commencement date</b>
1	Jackson	Jackson	1 November 1990
2	Thevenard Island	(a) Saladin; (b) Roller/Skate	Date on which total production of stabilised crude petroleum oil in the production areas exceeds 4767.3 megalitres
3	Varanus Island	Harriet/Lenita	Date on which production of stabilised crude petroleum oil in the production area exceeds 4767.3 megalitres

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<b>Oil producing regions, production areas and VOLWARE commencement dates</b>			
<b>Item</b>	<b>Oil producing region</b>	<b>Production areas</b>	<b>VOLWARE commencement date</b>
4	North West Shelf project area	(a) Wanaea; (b) Cossack; (c) Lambert/Hermes	Date on which total production of stabilised crude petroleum oil in the production areas exceeds 4767.3 megalitres
5	Legendre	Legendre	Date on which production of stabilised crude petroleum oil in the production area exceeds 4767.3 megalitres

Note: The VOLWARE commencement date for items 2, 3, 4 or 5 is the date on which production from the fields containing the production areas specified in the table item ceases to be exempt from duties of excise under the *Excise Tariff Act 1921*.

### **7 Oil producing regions, production areas and VOLWARE commencement dates—condensate**

- (1) This section applies for the purposes of the definitions of *oil producing region*, *production area* and *VOLWARE commencement date* in subsection 4(1) of the Act, to the extent that those definitions relate to condensate.

Note: Section 5A of the Act extends the operation of the Act so that it applies to condensate in a corresponding way to the way it applies to stabilised crude petroleum oil.

- (2) If only one production area is mentioned in an item of the table in subsection (6), that production area is the whole of the oil producing region mentioned in the table item.
- (3) If more than one production area is mentioned in an item of the table in subsection (6), those production areas are each part of, and together make up, the oil producing region mentioned in the table item.
- (4) Two or more oil producing regions may have the same name, based on being composed of different production areas.
- (5) The date specified in an item of the table in subsection (6) is the VOLWARE commencement date for excisable condensate obtained from the oil producing region mentioned in the table item.
- (6) The table is as follows:

<b>Oil producing regions, production areas and VOLWARE commencement dates</b>			
<b>Item</b>	<b>Oil producing region</b>	<b>Production areas</b>	<b>VOLWARE commencement date</b>
1	Jackson	Jackson	13 May 2008
2	Thevenard Island	(a) Saladin; (b) Roller/Skate	13 May 2008
3	Varanus Island	Harriet/Lenita	13 May 2008

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<b>Oil producing regions, production areas and VOLWARE commencement dates</b>			
<b>Item</b>	<b>Oil producing region</b>	<b>Production areas</b>	<b>VOLWARE commencement date</b>
4	North West Shelf project area	(a) Wanaea; (b) Cossack; (c) Lambert/Hermes	13 May 2008
5	Legendre	Legendre	13 May 2008
6	North West Shelf project area	Rankin Trend	13 May 2008
7	North West Shelf project area	Angel	Date on which production of condensate and stabilised crude petroleum oil in the production area exceeds 4767.3 megalitres

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## **8 Transactions entered into—prescribed information for giving to the Minister**

- (1) For the purposes of subsection 6(1) of the Act, the information in subsection (2) of this section must be given to the Minister in respect of each transaction concerning excisable crude petroleum oil or excisable condensate that:
- (a) has been entered for home consumption in a month; and
  - (b) was not produced from a limited production area.
- (2) The information is as follows:
- (a) whether the producer and the other party or parties to the transaction, or the producer and any of the parties to the transaction, are associates of each other;
  - (b) whether under the transaction the oil or condensate is to be loaded on a ship or ships or delivered by pipeline;
  - (c) if under the transaction all or part of that oil or condensate is loaded on a ship under a contract:
    - (i) the name of the producer; and
    - (ii) the date of the contract; and
    - (iii) the number of the contract, or the shipment number, allocated by the producer; and
    - (iv) the purchaser's name; and
    - (v) whether the sale is a domestic sale or an export sale; and
    - (vi) in a case where the contract so specifies—the destination of the oil or condensate; and
    - (vii) the name of the ship; and
    - (viii) the number of the bill of lading relating to the oil or condensate; and
    - (ix) the date of entry of the oil or condensate for home consumption; and
    - (x) the quantity of the oil or condensate loaded on the ship (expressed in kilolitres and in barrels); and
    - (xi) in a case where the contract is not an f.o.b. contract or any other contract under which the quantity of oil or condensate sold is the quantity of oil or condensate loaded on the ship—the quantity of the

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- oil or condensate delivered under the contract (expressed as an amount of kilolitres and as an equivalent amount of barrels); and
- (xii) whether the contract is an f.o.b. contract; and
  - (xiii) the price per kilolitre or per barrel for the oil or condensate; and
  - (xiv) if the price given under subparagraph (xiii) includes an amount of GST payable on the supply to which that price relates—the amount of GST, and the amount (less GST) payable for the supply; and
  - (xv) the due date for payment of the sale price under the contract; and
  - (xvi) the currency in which payment of the sale price is to be made (the *currency of payment*); and
  - (xvii) in a case where the currency of payment is not Australian dollars—the mid-rate quoted by the Reserve Bank for that currency for the due date for payment of the sale price or, if that rate is not quoted for that date, the mid-rate quoted by the Reserve Bank for that currency for the most recent day before that due date; and
  - (xviii) in a case where the currency of payment is not Australian dollars—the sale price under the contract (expressed as an amount of that currency and as an equivalent amount of Australian dollars); and
  - (xix) in a case where the currency of payment is not Australian dollars and the sale price under the contract includes an amount of GST payable on the supply to which that price relates—the amount of GST, and the amount (less GST) payable for the supply, expressed as amounts of that currency and as equivalent amounts of Australian dollars; and
  - (xx) the effective credit day for the transaction; and
  - (xxi) the number of credit days allowed under the contract; and
  - (xxii) the maximum indicator interest rate quoted by the Reserve Bank for the date of entry for home consumption of the oil or condensate or, if that rate is not quoted for that date, the maximum indicator interest rate quoted by the Reserve Bank for the most recent day before that date of entry;

Note: For subparagraphs (xiv) and (xix), the amount (less GST) payable for the supply will be an amount equal to the difference between the price referred to in that subparagraph and the amount of GST.

- (d) if all or part of that oil or condensate is loaded on a ship under a contract other than an f.o.b. contract—the value applicable under paragraph 12(1)(b) to each type of cost, referred to in paragraph 12(1)(a), incurred by the producer under that contract together with sufficient particulars to enable the nature of that cost to be readily identified;
- (e) if a value given under paragraph (d) is an amount mentioned in subparagraph 12 (1)(b)(ii) and the producer is entitled to an input tax credit for the acquisition to which that value relates:
  - (i) the amount of the input tax credit; and
  - (ii) the amount (less the input tax credit) incurred by the producer for the acquisition; and
  - (iii) a statement identifying the cost to which those amounts relate;

Note: The amount (less the input tax credit) incurred by the producer for the acquisition will be an amount equal to the difference between the value of the cost and the amount of the input tax credit.

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- (f) in a case where particulars of 2 or more types of cost are given in accordance with paragraph (d)—the total of those costs;
- (g) if a total is given under paragraph (f) and the producer is entitled to one or more input tax credits for the acquisitions to which that total relates:
  - (i) the total amount of the input tax credits; and
  - (ii) the total amount (less the total amount of the input tax credits) incurred by the producer for those acquisitions;

Note: The total amount (less the total amount of the input tax credits) incurred by the producer for those acquisitions will be an amount equal to the difference between the total given under paragraph (f) and the total amount of the input tax credits.

- (h) if all or part of that oil or condensate is delivered by pipeline under a contract:
  - (i) the name of the producer; and
  - (ii) the date of the contract; and
  - (iii) the number of the contract allocated by the producer; and
  - (iv) the purchaser's name; and
  - (v) date of entry of the oil or condensate for home consumption; and
  - (vi) the quantity of the oil or condensate (expressed as an amount of kilolitres and as an equivalent amount of barrels); and
  - (vii) the price per kilolitre or per barrel for the oil or condensate; and
  - (viii) if the price given under subparagraph (vii) includes an amount of GST payable on the supply to which that price relates—the amount of GST, and the amount (less GST) payable for the supply; and
  - (ix) the due date for payment of the sale price under the contract; and
  - (x) the currency in which payment of the sale price is to be made (the *currency of payment*); and
  - (xi) in a case where the currency of payment is not Australian dollars—the mid-rate quoted by the Reserve Bank for that currency for the due date for payment of the sale price or, if that rate is not quoted for that date, the mid-rate quoted by the Reserve Bank for that currency for the most recent day before that due date; and
  - (xii) in a case where the currency of payment is not Australian dollars—the sale price under the contract (expressed as an amount of that currency and as an equivalent amount of Australian dollars); and
  - (xiii) in a case where the currency of payment is not Australian dollars and the sale price under the contract includes an amount of GST payable on the supply to which that price relates—the amount of GST, and the amount (less GST) payable for the supply, expressed as amounts of that currency and as equivalent amounts of Australian dollars; and
  - (xiv) the effective credit day for the contract; and
  - (xv) the number of credit days allowed under the contract; and
  - (xvi) the maximum indicator interest rate quoted by the Reserve Bank for the date of entry for home consumption of the oil or condensate or, if that rate is not quoted for that date, the maximum indicator interest rate quoted by the Reserve Bank for the most recent day before that date of entry.

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Note: For subparagraphs (viii) and (xiii), the amount (less GST) payable for the supply will be an amount equal to the difference between the price referred to in that subparagraph and the amount of GST.

- (3) For the purposes of subsection 6(1) of the Act, if the transaction concerns excisable crude petroleum oil or excisable condensate that:
- (a) has been entered for home consumption in a month; and
  - (b) was produced from a limited production area;
- the information that must be given to the Minister in respect of the transaction is the volume of the oil or condensate entered for home consumption by the producer in the month.
- (4) If an oil producer or condensate producer is required by this section to give an amount, the producer must give:
- (a) the actual amount; or
  - (b) if this is not reasonably practicable—the producer’s best estimate of the amount.
- (5) If an oil producer or condensate producer gives an estimated amount, the producer must state that the amount is an estimate.

### 9 Transaction prices—manner of calculating

- (1) For the purposes of paragraph 7(5)(a) of the Act, the transaction price for a quantity of excisable crude petroleum oil that is all or part of a quantity of oil (the *delivered oil*) loaded on a ship, or delivered by pipeline, under a contract of sale is:
- (a) if the number of credit days allowed under the contract is no more than 30—the relevant delivery price of the delivered oil; or
  - (b) if the number of credit days allowed under the contract is more than 30—the result of deducting from the relevant delivery price of the delivered oil a credit allowance worked out under subsection (2) or (3), as the case requires.

Note 1: For the *relevant delivery price*, see section 10.

Note 2: For calculating the transaction price under this subsection, adjustments may have to be made to the sale price and the value of any allowable costs (see subsection (4)).

- (2) Subject to subsection (3), the credit allowance for the purposes of paragraph (1)(b) is the result of the following formula (expressed as an amount of Australian dollars to the nearest cent):

$$\frac{\left( \text{Number of credit days allowed} - 30 \right) \times \text{Interest rate} \times \text{Relevant delivery price of the delivered oil}}{\text{Number of days in the applicable year}}$$

where:

*interest rate* means:

- (a) if there is a maximum indicator interest rate for the date of entry for home consumption of the delivered oil—that maximum indicator interest rate; or

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- (b) otherwise—the maximum indicator interest rate quoted by the Reserve Bank for the most recent day before that date of entry.

**number of days in the applicable year** means:

- (a) if under the contract the effective credit day and the due date for payment are in the same financial year—the number of days in that financial year; or
- (b) if under the contract:
- (i) the effective credit day is in one financial year and the due date for payment is in the next later financial year; and
  - (ii) the number of credit days allowed under the contract that happen in the first of those financial years is no more than 30; the number of days in the second of those financial years.

(3) If:

- (a) the effective credit day under the contract is in one financial year (the **first year**) and the due date for payment under the contract is in the next later financial year (the **second year**); and
- (b) the number of credit days allowed under the contract that happen in the first year is more than 30;

the credit allowance for the purposes of paragraph (1)(b) is the result of the following formula (expressed as an amount of Australian dollars to the nearest cent):

$$\frac{\left( \text{Number of credit days allowed that happen in the first year} - 30 \right) \times IR \times RDP}{\text{Number of days in the first year}} + \frac{\left( \text{Number of credit days allowed that happen in the second year} \times IR \times RDP \right)}{\text{Number of days in the second year}}$$

where:

**IR** has the same meaning as **interest rate** in subsection (2).

**RDP** means the relevant delivery price of the delivered oil.

- (4) Despite subsection (1) or section 10, in calculating the transaction price for a quantity of excisable crude petroleum oil:
- (a) if the price per kilolitre of the oil, or the sale price, under the contract of sale includes an amount of GST payable on the supply to which that price relates—that price is to be reduced by the amount of GST; and
- (b) if:
- (i) the value applicable under paragraph 12(1)(b) to a cost mentioned in paragraph 12(1)(a) is an amount mentioned in subparagraph 12(1)(b)(ii); and
  - (ii) the producer is entitled to an input tax credit for the acquisition to which that value relates;

that value is to be reduced by the amount of the input tax credit.

Note: No adjustment is made under this subsection for a value agreed under subparagraph 12(1)(b)(i) because adjustment has already been made in agreeing on that value—see subsection 12(2).

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## Section 10

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### 10 Transaction prices—relevant delivery price

- (1) The **relevant delivery price**, for a quantity of crude petroleum oil loaded on a ship, or delivered by pipeline, under a contract of sale is:
- (a) for oil loaded on a ship under an f.o.b. contract or delivered by pipeline—the excisable quantity price for that oil; or
  - (b) otherwise—the excisable quantity price for that oil less the excisable quantity cost for that oil.

Note: For the **excisable quantity price**, see subsection (2). For the **excisable quantity cost**, see subsection (4).

#### *Excisable quantity price*

- (2) The **excisable quantity price**, for all or part of a quantity of crude petroleum oil entered for home consumption during a month, is the amount (expressed as an amount of Australian dollars to the nearest cent) equal to the proportion of the applicable whole price for that oil that is the same as the proportion:

$$\frac{\text{Total quantity of excisable crude petroleum oil entered for home consumption during that month by the relevant oil producer}}{\text{Total quantity overall}}$$

where:

**total quantity overall** means the total quantity of:

- (a) excisable crude petroleum oil entered for home consumption during that month by the relevant oil producer; and
  - (b) any other crude petroleum oil mixed with that oil at the time of that entry.
- (3) The **applicable whole price**, for a quantity of crude petroleum oil loaded on a ship, or delivered by pipeline, under a contract of sale, is the following:
- (a) if:
    - (i) the contract is a contract, other than an f.o.b. contract or any other contract under which the quantity of oil sold is the quantity of oil loaded on a ship, under which a quantity of oil is loaded on a ship (the **loaded quantity**); and
    - (ii) the amount of the sale price under the contract is to be worked out by reference to the quantity of oil delivered under the contract (the **delivered quantity**); and
    - (iii) the loaded quantity exceeds the delivered quantity by more than 0.5% of the loaded quantity;the result of the following formula (expressed as an amount of Australian dollars to the nearest cent):
$$\left( \text{Loaded quantity} - 0.005 \times \text{Loaded quantity} \right) \times \frac{\text{Price per kilolitre of oil under the contract}}{\text{delivered quantity}}$$
  - (b) otherwise—the price indicated in the contract as the sale price, expressed as an amount of Australian dollars to the nearest cent.

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*Excisable quantity cost*

- (4) The ***excisable quantity cost***, for all or part of a quantity of crude petroleum oil entered for home consumption during a month, is the amount (expressed as an amount of Australian dollars to the nearest cent) equal to the proportion of the applicable whole cost for that oil that is the same as the proportion:

$$\frac{\text{Total quantity of excisable crude petroleum oil entered for home consumption during that month by the relevant oil producer}}{\text{Total quantity overall}}$$

where:

***total quantity overall*** means the total quantity of:

- (a) excisable crude petroleum oil entered for home consumption during that month by the relevant oil producer; and
  - (b) any other crude petroleum oil mixed with that oil at the time of that entry.
- (5) The ***applicable whole cost***, for a quantity of crude petroleum oil loaded on a ship under a contract of sale by the oil producer of that oil is the total of the values applicable under paragraph 12(1)(b) to any of the costs referred to in paragraph 12(1)(a) incurred by the relevant oil producer under the contract.

## 11 Transaction prices—condensate

Sections 9 and 10 apply in relation to condensate as if:

- (a) a reference in those sections to excisable crude petroleum oil were a reference to excisable condensate; and
- (b) a reference in those sections to crude petroleum oil, or to oil, were a reference to condensate.

## 12 Transport costs

- (1) For the purposes of paragraph 8(2)(d) and subsection 10(5):
- (a) the costs are as follows:
    - (i) freight;
    - (ii) insurance;
    - (iii) demurrage at the port of destination not caused by any action of the producer;
    - (iv) lighterage at the port of destination;
    - (v) wharfage at the port of destination;
    - (vi) heating of the oil or condensate;
    - (vii) bunkers;
    - (viii) survey; and
  - (b) the value of a cost referred to in a subparagraph of paragraph (a) is:
    - (i) if the Minister, or an authorised person, and the producer agree on that value—the value as agreed; or
    - (ii) otherwise—the amount (if any) incurred in respect of that cost; expressed as an amount of Australian dollars to the nearest cent.

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## Section 13

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- (2) In agreeing on the value of a cost under subparagraph (1)(b)(i), the Minister, or the authorised person, and the producer are to:
- (a) include in that value any amount of GST that would be payable on the supply to which that value relates; and
  - (b) exclude from that value the amount of any input tax credit to which the producer would be entitled for the acquisition to which that value relates.
- (3) In this section:

*authorised person* means a person for the time being authorised by the Minister to exercise the Minister's powers under section 7 of the Act.

### 13 Conversion into Australian dollars of amounts expressed in foreign currency

For the purposes of paragraph 8(2)(d) and subsections 10(3) and (5), if either of the following is expressed in a foreign currency:

- (a) an amount indicated in a contract of sale as the sale price;
- (b) an amount incurred under a contract of sale in respect of a cost of a type referred to in paragraph 12(1)(a);

the exchange rate to convert that amount into Australian dollars is:

- (c) if the Reserve Bank quotes a mid-rate for the foreign currency for the due date for payment of the sale price under that contract—that mid-rate; or
- (d) otherwise—the mid-rate quoted by the Reserve Bank for that currency for the most recent day before that due date.

### 14 Things done under the *Petroleum Excise (Prices) Regulations 1988*

A thing done:

- (a) before the commencement of this instrument; and
- (b) under a provision of the *Petroleum Excise (Prices) Regulations 1988*;

has effect after that commencement as if the thing had been done under the corresponding provision of this instrument.

## **Schedule 1—Repeals**

### *Petroleum Excise (Prices) Regulations 1988*

#### **1 The whole of the instrument**

Repeal the instrument.