

**Senate Standing Committee  
for the  
Scrutiny of Bills**



**Alert Digest**

**No. 5 of 2008**

**18 June 2008**



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# Senate Standing Committee for the Scrutiny of Bills

## Members of the Committee

Senator the Hon C Ellison (Chair)

Senator M Bishop (Deputy Chair)

Senator J Collins

Senator A McEwen

Senator A Murray

Senator the Hon J Troeth

## Terms of Reference

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
  - (iv) inappropriately delegate legislative powers; or
  - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.



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- **The Committee has commented on these bills**

This Digest is circulated to all Honourable Senators.  
Any Senator who wishes to draw matters to the attention of the  
Committee under its terms of reference is invited to do so.





## **Commonwealth Securities and Investment Legislation Amendment Bill 2008**

Introduced into the House of Representatives on 4 June 2008

Portfolio: Treasury

### **Background**

This bill amends the *Commonwealth Inscribed Stock Act 1911*, the *Financial Management and Accountability Act 1997* and the *Loans Securities Act 1919* to:

- provide authority for the Treasurer to borrow money on behalf of the Commonwealth by issuing Commonwealth Government Securities denominated in Australian currency, up to a maximum total face value of \$75 billion;
- broaden the Treasurer's investment powers;
- allow the Treasurer to delegate specified powers under each of these Acts to persons who meet specified criteria; and
- allow a wider range of collateral to be accepted in connection with Commonwealth Government Securities lending arrangements.

The bill also contains application provisions.

*The Committee has no comment on this bill.*

## **Crimes Legislation Amendment (Miscellaneous Matters) Bill 2008**

Introduced into the House of Representatives on 4 June 2008  
Portfolio: Home Affairs

### **Background**

This bill amends the:

- *Australian Federal Police Act 1979* to reinsert the maximum penalty of two years imprisonment for the secrecy offence in subsection 60A(2) of that Act. The restored penalty provision will commence retrospectively from 30 December 2006, the date on which it was inadvertently repealed by the *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006*;
- *Crimes Act 1914* to defer the second review of Part ID of that Act until November 2009; and
- *Crimes (Aviation) Act 1991* to ensure that it applies the *Criminal Code 2002 (ACT)* to conduct on relevant flights.

### **Retrospective commencement Schedule 1, item 1**

Item 2 in the table to subclause 2(1) of this bill provides that the amendment proposed in item 1 of Schedule 1 will commence retrospectively on 30 December 2006, immediately after the commencement of item 4 of Schedule 1 to the *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006*.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this instance, the Committee notes from the explanatory memorandum that the 2006 Act inadvertently repealed the

penalty provision in subsection 60A(2) of the *Australian Federal Police Act 1979*, although the secrecy offence to which it relates continued to be in force. Item 1 of Schedule 1 will correct that error.

*In the circumstances, the Committee makes no further comment on this provision.*

## **Income Tax (Managed Investment Trust Transitional) Bill 2008**

Introduced into the House of Representatives on 4 June 2008

Portfolio: Treasury

### **Background**

Introduced with the Income Tax (Managed Investment Trust Withholding Tax) Bill 2008 and the Tax Laws Amendment (Election Commitments No. 1) Bill 2008, this bill provides for a transitional rate of withholding tax of 22.5 per cent, which applies to residents of countries with which Australia has effective exchange of information on tax matters for the first income year of the new withholding tax regime.

*The Committee has no comment on this bill.*

## **Income Tax (Managed Investment Trust Withholding Tax) Bill 2008**

Introduced into the House of Representatives on 4 June 2008

Portfolio: Treasury

### **Background**

Introduced with the Income Tax (Managed Investment Trust Transitional) Bill 2008 and the Tax Laws Amendment (Election Commitments No. 1) Bill 2008, this bill provides withholding tax rates of 15 percent for the second income year and 7.5 per cent for later income years for foreign investors who are residents of countries with which Australia has effective exchange of information on tax matters.

A rate of 30 per cent final withholding tax applies to foreign investors resident in countries with which Australia does not have effective exchange of tax information.

*The Committee has no comment on this bill.*

## Interactive Gambling Amendment Bill 2008

Introduced into the House of Representatives on 2 June 2008

By Mr Billson

### Background

This bill amends the *Interactive Gambling Act 2001* to:

- prohibit the roll-out of new gambling technology in the form of subscription television based interactive gambling; and
- require the Minister to cause a review of the operation of the Act to be undertaken by 30 June 2009, with the report to be tabled in both Houses of Parliament.

### Explanatory Memorandum

The Committee notes that this bill, introduced as a private Member's bill, was accompanied by a statement made on presentation of the bill and was introduced without an explanatory memorandum. The consideration of bills by the Committee and by the parliament is assisted if they are accompanied by explanatory memoranda. The Committee recognises, of course, that private Senators and Members do not generally have access to the resources of departments and agencies to assist in the development of such documents. In this context, the Committee notes that the Department of the Senate has developed a set of guidelines to assist Senators with the preparation of private bills and explanatory material, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*. This guide, which is available from the Clerk Assistant (Procedure) and on the Senate's intranet site, may assist Senators and Members in preparing explanatory memoranda.

*In the circumstances, the Committee makes no further comment on this bill.*

## **Tax Laws Amendment (Election Commitments No. 1) Bill 2008**

Introduced into the House of Representatives on 4 June 2008

Portfolio: Treasury

### **Background**

Introduced with the Income Tax (Managed Investment Trust Transitional) Bill 2008 and the Income Tax (Managed Investment Trust Withholding Tax) Bill 2008, Schedule 1 of this bill amends the *Taxation Administration Act 1953* and the *Income Tax Assessment Act 1997* to replace the existing 30 per cent non-final withholding regime applying to certain distributions from Australian managed investment trusts with a new withholding regime.

Schedule 1 also makes consequential amendments to the *Income Tax Act 1986*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997* and the *Taxation Administration Act 1953*.

Schedule 2 amends the *Income Tax Assessment Act 1997* to exempt from income tax the Prime Minister's Literary Award, to the extent that the award would otherwise be assessable income.

The bill also contains application provisions.

*The Committee has no comment on this bill.*

## COMMENTARY ON AMENDMENTS TO BILLS

### Excise Tariff Amendment (Condensate) Bill 2008

On 2 June 2008, the House of Representatives agreed to one amendment to this bill.

#### Retrospective application

#### Schedule 1, item 27, proposed new subsections 6CA(13) and 6CA(13A)

The amendment inserts a new subsection 6CA(13A) into the *Excise Tariff Act 1921*, authorising the Commissioner of Taxation to make a by-law prescribing a ‘condensate production area’, with effect from a date before the date the by-law is published in the Commonwealth *Gazette*. The supplementary explanatory memorandum notes that the ‘amendment is consistent with item 27 of the Excise Tariff Amendment (Condensate) Bill 2008... [which] allows a by-law prescribing a ‘condensate production area’ to take effect from a date before the by-law is registered under the *Legislative Instruments Act 2003*. Both of these provisions therefore allow the by-law to apply retrospectively.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. The Committee notes that the effect of this retrospectivity is that a person may have to pay a higher rate of excise duty on condensate entered into home consumption. The provisions may, therefore, have a detrimental effect on individuals other than the Commonwealth.

The Committee **seeks the Treasurer’s advice** as to the rationale for requiring the by-law to take effect from a date prior to its publication in the *Gazette* or registration under the *Legislative Instruments Act 2003*.

*Pending the Treasurer’s advice, the Committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee’s terms of reference.*



**Tax Laws Amendment (2008 Measures No. 3) Bill 2008**

On 5 June 2008, the House of Representatives made three amendments to this bill, none of which fall within the Committee's terms of reference.

## SCRUTINY OF STANDING APPROPRIATIONS

The Committee has determined that, as part of its standard procedures for reporting on bills, it should draw senators' attention to the presence in bills of standing appropriations. It will do so under provisions 1(a)(iv) and (v) of its terms of reference, which require the Committee to report on whether bills:

- (iv) inappropriately delegate legislative powers; or
- (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Further details of the Committee's approach to scrutiny of standing appropriations are set out in the Committee's *Fourteenth Report of 2005*. The following is a list of the bills containing standing appropriations that have been introduced since the beginning of the 42<sup>nd</sup> Parliament.

### Bills introduced with standing appropriation clauses – 42nd Parliament

*Indicates passed by Senate	Bills and Clauses
	<b>Commonwealth Securities and Investment Legislation Amendment Bill 2008</b> — Schedule 1, item 10, subsection 5BA(7)
	<b>Defence Home Ownership Assistance Scheme Bill 2008</b> — Clause 84
	<b>Dental Benefits Bill 2008</b> — Clause 65
	<b>Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008</b> — Schedule 1, item 29.
	<b>Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Bill 2008</b> — Schedule 1, item 79, section 94B (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i> )
	<b>Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008</b> — Schedule 1, item 1
	<b>Wheat Export Marketing Bill 2008</b> — clause 58 (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i> )

### Other relevant appropriation clauses

*Indicates passed by Senate	Bills and Clauses
*	<b>Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Bill 2008</b> — Schedule 2, items 1 and 2, and Schedule 4, item 1: special appropriation clauses – for a finite period of time (ie. For circumstances arising in a particular financial year).

## STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

## INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2007/2008

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
<b>Bills dealt with in 2007</b>							
Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures Bill 2007	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 1(12.3.08)
Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Bill 2007	8(8.8.07)	21.6.07	13.9.07	Treasurer	9.8.07	20.9.07	1(12.3.08)
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Bill 2007	8(8.8.07)	21.6.07	13.9.07	Treasurer	9.8.07	19.9.07	1(12.3.08)
National Greenhouse and Energy Reporting Bill 2007	11(12.9.07)	15.8.07	18.9.07	Environment and Water Resources	13.9.07	2.10.07	1(12.3.08)
<i>Northern Territory National Emergency Response Act 2007</i>	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 1(12.3.08)
<i>Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007</i>	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 1(12.3.08)
<i>Water Act 2007</i>	10(15.8.07)	8.8.07	15.8.07	Environment and Water Resources	16.8.07	23.11.07	1(12.3.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
<b>Bills introduced 2008</b>							
<i>Aged Cared Amendment (2008 Measures No. 1) Act 2008</i>	1(12.3.08)	13.2.08	14.2.08	Health and Ageing	13.3.08		
<i>Australian Crime Commission Amendment Act 2007</i>	3(14.5.08)	19.9.07	18.9.07	Home Affairs	15.5.08		
Australian Energy Market Amendment (Minor Amendments) Bill 2008	3(14.5.08)	20.3.08		Resources, Energy and Tourism	15.5.08	28.5.08	4(4.6.08)
Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Infrastructure, Transport, Regional Development and Local Government	15.5.08		
Communications Legislation Amendment (Miscellaneous Measures) Bill 2008	2(19.3.08)	17.3.08	12.3.08	Broadband, Communications and the Digital Economy	20.3.08	13.5.08	3(14.5.08)
Customs Amendment (Strengthening Border Controls) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Home Affairs	15.5.08	13.6.08	5(18.6.08)
Customs Legislation Amendment (Modernising) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Home Affairs	15.5.08	13.6.08	5(18.6.08)
Dental Benefits Bill 2008	4(4.6.08)	29.5.08	18.6.08	Health and Ageing	5.6.08		
Drink Container Recycling Bill 2008	2(19.3.08)		13.3.08	Senator Fielding			
Excise Legislation Amendment (Condensate) Bill 2008	4(4.6.08)	15.5.08	16.6.08	Treasury	5.6.08	17.6.08	5(18.6.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Family Assistance Legislation Amendment (Child Care Budget and Other Measures) Bill 2008	4(4.6.08)	29.5.08	16.6.08	Education, Employment and Workplace Relations	5.6.08		
Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008	4(4.6.08)	29.5.08	16.6.08	Agriculture, Fisheries and Forestry	5.6.08	17.6.08	5(18.6.08)
Financial Sector Legislation Amendment (Review of Prudential Decisions) Bill 2008	1(12.3.08)	11.3.08	13.2.08	Treasury	13.3.08	18.3.08	2(19.3.08)
First Home Saver Accounts Bill 2008	4(4.6.08)	28.5.08	16.6.08	Treasury	5.6.08	16.6.08	5(18.6.08)
Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority And Other Matters) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Agriculture, Fisheries and Forestry	15.5.08	28.5.08	4(4.6.08)
Horse Disease Response Levy Bill 2008	1(12.3.08)	21.2.08		Agriculture, Fisheries and Forestry	13.3.08		
Horse Disease Response Levy Collection Bill 2008	1(12.3.08)	21.2.08		Agriculture, Fisheries and Forestry	13.3.08		
Independent Reviewer of Terrorism Laws Bill 2008	3(14.5.08)	17.3.08		Mr Georgiou MP	15.5.08	26.5.08	4(4.6.08)
Infrastructure Australia Bill 2008	1(12.3.08)	21.2.08	18.3.08	Infrastructure, Transport, Regional Development and Local Government	13.3.08	18.3.08	2(19.3.08)
National Commissioner for Children Bill 2008	3(14.5.08)		18.3.08	Senator Bartlett	15.5.08		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008	4(4.6.08)	29.4.08	16.6.08	Treasury	5.6.08		
Protection of the Sea (Civil Liability For Bunker Oil Pollution Damage) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Infrastructure, Transport, Regional Development and Local Government	15.5.08	2.6.08	4(4.6.08)
Renewable Energy (Electricity) Amendment (Feed-in-Tariff) Bill 2008	4(4.6.08)	15.5.08		Senator Milne	5.6.08	12.6.08	5(18.6.08)
Unit Pricing (Easy comparison of Grocery prices) Bill 2008	4(4.6.08)		15.5.08	Senator Fielding	5.6.08	5.6.08	5(18.6.08)
Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008	3(14.5.08)	19.3.08	16.6.08	Veterans' Affairs	15.5.08		
<i>Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008</i>	1(12.3.08)	13.2.08	17.3.08	Employment and Workplace Relations	13.3.08 20.3.08	18.3.08 22.4.08	2(19.3.08) 3(14.5.08)

