

Environment and Communications Legislation Committee

Answers to questions on notice

Agriculture, Water and the Environment Portfolio

Committee: Environment and Communications Legislation Committee

Inquiry: Inquiry into the Product Stewardship (Oil) Amendment Bill 2020 and the Excise Tariff Amendment Bill 2020

Question No: 1

Division/Agency: Environment Protection Division (EPD)

Topic: Excise Tariff Act 1921

Question Date: 14 July 2020

Question Type: Written

Senator Green asked:

1. Either in anticipation of, or following the result of the Federal Court ruling of the “Caltex Case”, what consideration did the Commonwealth give to determining whether to impose on Caltex an excise duty for oils as outlined under item 15 of the Excise Tariff Act 1921 in order to recoup the benefit payment that was being claimed? If no such approaches were considered, why not?
2. What legal or other advice was provided to the Commonwealth that led to the decision to not seek to apply such a levy, or otherwise recoup the benefit payment to Caltex?
3. At any point in the course of this matter did any communication (written or otherwise) take place between Caltex or its representatives and the Commonwealth or its representatives in relation to corporate social responsibility, particularly in relation to Caltex’s decision to seek an \$8 million benefit payment from the Commonwealth through the Product Stewardship Oil Scheme in circumstances when it knew the Scheme was not intended to function in that way, and when it ought to have known the pursuit of the benefit payment was in effect the pursuit of a windfall, the technical entitlement to which was of questionable moral basis?

Answer:

1. Administration of the *Excise Tariff Act 1921* is the responsibility of the Australian Taxation Office (ATO); questions on the *Excise Tariff Act 1921* should be directed to the ATO.
2. The Department of Agriculture, Water and the Environment (DAWE) does not have a decision-making role regarding the administration of the *Excise Tariff Act 1921*. Consequently, DAWE did not obtain legal or other advice regarding the application of a levy.
3. DAWE was not a party to the “Caltex Case” and did not engage in any communication with Caltex Australia Petroleum Pty Ltd on this matter. As the policy department for the Product Stewardship for Oil scheme, DAWE has taken steps to amend the *Product Stewardship (Oil) Act 2000* after the “Caltex Case” to retain the original policy intent of the legislation.