



Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2]

It should be noted that the name of the Bill as introduced on 22 July 2009 is Excise Tariff Amendment (2009 Measures No. 1) Bill 2009.

The Bills is not identical to the earlier bill of the same name, introduced in the House of Representatives on 11 February 2009, but is identical to the bill (which included amendments made by the Government in the House of Representatives on 25 February 2009) which was rejected by the Senate on 18 March 2009. The addition of the reference [No. 2] has been made by the Department of the House of Representatives Table Office to indicate that the Bill is introduced for a second time.

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Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2]

Date introduced: 22 June 2009

House: House of Representatives

Portfolio: Department of Treasury

Commencement: Sections 1–3 on the day of Royal Assent; Schedule 1 on 27 April 2008 and Schedule 2 at the same time as Schedule 2 to the *Customs Tariff Amendment (2009 Measures No. 1) Act 2009* commences.¹

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Bill is to amend the *Excise Tariff Act 1921* (the Excise Tariff Act) to:

- increase the tax applying to ‘other excisable beverages not exceeding ten per cent by volume of alcohol’ from \$39.36 to \$66.67 per litre of alcohol from 27 April 2008 and
- ensure that products which mimic spirit-based ready-to-drink beverages (RTDs) are subject to the same tax rate as RTDs.

Background

This Bills Digest should be read in conjunction with the [Bills Digest](#) for the Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2].²

The original ‘alcopops’ bills

The Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 1] and Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 1] (the original ‘alcopops’ bills) were introduced into the House of Representatives and read for the first and second times

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1. In brief, this will be the later of, the day after Royal Assent, or 1 July 2009.
 2. Paula Pyburne, ‘Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2]’, *Bills Digest* no. 180, 2008-09, Canberra 2009
<http://www.aph.gov.au/library/pubs/bd/2008-09/09bd181.pdf>

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on 11 February 2009.³ The relevant [Bills Digest](#) contains information about the contents of the bills.⁴

The original ‘alcopops’ bills contained changes to the excise tariff and excise-equivalent customs tariff payable on ready-to-drink beverages (colloquially referred to as ‘alcopops’). The ‘alcopops’ tax changes were initially contained in two proposals which were tabled in the House of Representatives by the Minister for Health and Ageing Nicola Roxon on 13 May 2008 who stated that:

The excise and customs tariff proposals that I have just tabled contain alterations to the *Excise Tariff Act 1921* and *Customs Tariff Act 1995*.

The proposals formally place before the parliament changes to both acts to increase the rate of excise and customs duty applying to ‘other excisable beverages not exceeding 10 per cent by volume of alcohol’ from \$39.36 to \$66.67 per litre of alcohol content, on and from 27 April 2008.⁵

The two proposals were [Excise Tariff Proposal \(No. 1\) 2008](#) (covering goods made in Australia)⁶ and [Customs Tariff Proposal \(No. 1\) 2008](#) (covering imported goods).⁷

Government amendments

During the debate on the original ‘alcopops’ bills in the House of Representatives the existence of beer-based alternatives to ‘alcopops’ (referred to as ‘malternatives’) was recognised. The ‘malternatives’ which are:

3. N Roxon (Minister for Health and Ageing), ‘Second Reading Speech: Excise Tariff Amendment (2009 Measures No. 1) Bill 2009’ *House Hansard*, 11 February 2009, p. 868, viewed 22 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2009-02-11%2F0009%22>
4. M Thomas and P Pyburne, ‘Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 and Customs Tariff Amendment (2009 Measures No. 1) Bill 2009’, Bills digest nos. 100–101, Parliamentary Library, Canberra, 3 March 2009, viewed 22 June 2009, <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd100.pdf>
5. N Roxon, (Minister for Health and Ageing), ‘Tariff Proposals: Excise Tariff Proposal (No. 1) 2008 and Customs Tariff Proposal (No. 1) 2008’, House of Representatives, *Debates*, 13 May 2008, p. 2613, viewed 22 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2008-05-13%2F0122%22>
6. *Gazetted* in Commonwealth of Australia, *Special Gazette*, no. S.87, Attorney-General’s Department, 26 April 2008.
7. *Gazetted* in Commonwealth of Australia, *Special Gazette*, no. S.88, Attorney-General’s Department, 26 April 2008.

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pitched at drinkers aged between 18 years and 30 years, are similar in alcohol content, flavour and appearance to many alcopops. However, because these drinks are beer-rather spirits-based, they attract far less excise than do their ‘alcopop’ equivalents, and retail for around half their price.⁸

As a result, Nicola Roxon introduced amendments to the original ‘alcopops’ bills which would address this apparent loop hole.⁹ These amendments were included in the bills (the amended ‘alcopops’ bills) which were transmitted to the Senate for consideration on 11 March 2009.

The vote in the Senate

In the lead up to the vote on the amended ‘alcopops’ bills there was considerable negotiation between the government and the minor parties in an effort to assist the passage of the bills through the Senate. In particular the Minister for Health and Ageing was able to:

... woo Independent Senator Nick Xenophon and the Greens with a package of measures that included an extra \$50 million for initiatives to tackle binge drinking...

- The Government has offered as concessions:
- **A fund** to provide sponsorship to local community organisations
- **Community**-level initiatives to tackle binge drinking
- **improved** telephone counselling services, and
- **possible** expansion of social marketing campaigns.¹⁰

However, despite these concessions, the Senate voted down the amended ‘alcopops’ bills on 18 March 2009.¹¹

8. M Thomas and P Pyburne, p. 17.

9. N Roxon (Minister for Health and Ageing), Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 and Customs Tariff Amendment (2009 Measures No. 1) Bill 2009, Second Reading, *House Hansard*, 25 February 2009 p. 1847, viewed 23 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2009-02-25%2F0095%22>

10. L Anderson, ‘Fielding rejects ‘tax grab’ alcopop package’, *Adelaide Advertiser*, 18 March 2009, p. 11, viewed 22 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FO42T6%22>

11. Customs Tariff Amendment (2009 Measure No. 1) Bill 2009 and Excise Tariff Amendment (2009 Measure No. 1) Bill 2009, Third reading division, *Senate Hansard*, 18 March 2009,

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The Government subsequently moved that there be two new tariff proposals, namely [Excise Tariff Proposal \(No. 1\) 2009](#) (covering goods made in Australia) and [Customs Tariff Proposal \(No. 3\) 2009](#) (covering imported goods).¹²

The validating legislation

A tariff proposal is not legislation. It is an executive instrument. A proposal does not legally alter the relevant legislative tariff¹³ and there is case law which could be used to support the suggestion that a proposal alone does not actually give the Commonwealth legal authority to collect duties according to the new or amended tariff contained in the proposal.¹⁴

In the period leading up to the crucial vote on the amended ‘alcopops’ bills on 18 March 2009 there was considerable debate about whether in the event the bills were not passed, the amount of the tax already collected, (being approximately \$290 million),¹⁵ would need to be refunded and if so, to whom it would be refunded.¹⁶

The Government took the view that the monies collected would have to be returned to the distillers.¹⁷

p. 1964, viewed 22 June 2009,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2009-03-18%2F0145%22>

12. The effect of these proposals is that excise and excise-equivalent customs may continue to be collected at the higher rate until relevant validating legislation is passed.
13. S Daley and R A Kenway, ‘*Customs and Excise*’, Laws of Australia, Lawbook Co., March 2001, Chapter 24.1, paragraph 233.
14. See *Sargood Brothers v Commonwealth* (1910) 11 CLR 258, per O’Connor J at 276, cited in S Daley and R A Kenway.
15. P Maleny, ‘Alcopops defeat would give distillers \$290m’, *The Australian*, 16 March 2009, p. 2, viewed 22 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FK11T6%22>
16. M Madigan, ‘Windfall if alcopops tax voted down’, *Courier Mail*, 12 February 2009, p. 25, viewed 22 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F7IRS6%22>
17. N Roxon (Minister for Health and Ageing), ‘Consideration of Senate Message: Customs Tariff Amendment (2009 Measures No. 1) Bill 2009’, *Debates*, 17 March 2009, p. 2914, viewed 22 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F2009-03-17%2F0076%22>

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On 15 April 2009 the Treasurer, Wayne Swan and the Minister for Health and Ageing, Nicola Roxon announced that in May, the Government would, amongst other things introduce legislation to validate the revenue collected between 27 April 2008 and 13 May 2009.¹⁸

Accordingly the Customs Tariff Validation Bill 2009 and the Excise Tariff Validation Bill 2009 were introduced into the House of Representatives on 12 May 2009.¹⁹ These Bills were passed by the Senate without amendment on 13 May 2009²⁰ and given the Royal Assent by the Governor-General on the same day.²¹ The [Bills Digest](#) for the validation bills contains relevant information.²²

Position of significant interest groups

The precise impact of the alcopop excise increase in terms of reducing risky drinking among young Australians remains unclear.

Treasury figures indicate a 35 per cent reduction in the consumption of alcopops for the period May 2008 to March 2009, compared to the same period in the previous year.²³ In the same period, the consumption of full-strength spirits rose by 18 per cent and beer

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18. W Swan (Treasurer) and N Roxon (Minister for health and Ageing), 'Government to re-introduce Alcopops Measure', media release, Canberra, 15 April 2009, viewed 22 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FYHAT6%22>
 19. See House of Representatives Votes and Proceedings 12 May 2009, viewed 22 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orderBy=date-eFirst;page=0;query=customs%20tariff%20validation%20Date%3A12%2F05%2F2009%20%3E%3E%2016%2F05%2F2009%20Dataset%3Avotes;querytype=:rec=4;resCount=Default>
 20. See House of Representatives Votes and Proceedings 13 May 2009, viewed 22 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fvotes%2F2009-05-13%2F0013%22>
 21. See House of Representatives Votes and Proceedings 13 May 2009, viewed 22 June 2009: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fvotes%2F2009-05-14%2F0031%22>
 22. P Pyburne, 'Customs Tariff Validation Bill 2009 and Excise Tariff Validation Bill 2009', Bills digest nos. 166–167 2008–09, Parliamentary Library, Canberra, 12 June 2009, viewed 22 June 2009, <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd166.pdf>
 23. Australian Government, 'Statement 5: Revenue', *Budget strategy and outlook: budget paper no. 1: 2009-10*, Commonwealth of Australia, Canberra, 2009, pp. 5-30–5-32, viewed 22 June 2009, http://www.budget.gov.au/2009-10/content/bp1/downloads/bp_1.pdf

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consumption increased by 5 per cent.²⁴ While these figures suggest that there may have been some substitution from alcopops to other alcoholic beverages, there was nevertheless an overall decrease in the consumption of spirit drinks of 8 per cent. It is also the case that, despite increases in the consumption of full-strength spirits and beer, overall alcohol consumption declined by 0.5 per cent.²⁵ This contrasts with slightly increased alcohol consumption for the same period in previous years.

Since the alcopop excise increase's defeat in the Senate on 18 March 2009, Independent Distillers has mounted a sustained campaign against the increase. It continues to argue that the increase can not solve the problem of risky drinking among young people, and has cited the above figures as evidence of the excise increase's failure.²⁶ As Independent Distillers sees it, the fact that there has been a decrease in the consumption of alcopops, paralleled by an increase in the consumption of full-strength spirits and beer, is a 'bad result'. This shift in consumption patterns, Independent Distillers argues, simply means that young people have shifted to cheaper forms of alcohol product and, in the case of unmeasured full-strength spirits, an alcohol product that is likely to make drinking behaviour more risky.²⁷

Independent Distillers has also argued against the alcopop excise increase on other grounds. Were the increase to be approved, Independent Distillers argues, this could force the company to close its manufacturing plant at Laverton, Victoria, resulting in the loss of 135 jobs and a further 150 jobs in related industries.²⁸ In a time of global financial crisis, Independent Distillers maintains, the Government should not be pushing ahead with an 'unfair tax' that has the potential to put people out of a job.

By contrast with Independent Distillers, health experts continue to strongly support the alcopop excise increase as an important first step in reducing alcohol-related harm among young Australians.²⁹ While health experts have consistently argued for a more

24. Australian Government, p. 5-32.

25. Australian Government, p. 5-32.

26. Independent Distillers, 'Alcopops' tax has failed', media release, 15 June 2009; Independent Distillers, 'Alcopops' Tax: The Facts', media release, 15 June 2009.

27. Independent Distillers, 'Alcopops' tax has failed'; Independent Distillers, 'Alcopops' Tax: The Facts'; M McShane, 'Alcopop tax must go down the tubes', *Canberra Times*, 10 March 2009, p. 1, viewed 22 June 2009, http://parlinfo/parlInfo/download/media/pressclp/21ZS6/upload_binary/21zs60.pdf;fileType=application/pdf#search=%22Alcopop%20tax%20must%20go%20down%20the%20tubes%22

28. Independent Distillers, 'Save our jobs – Independent Distillers staff to march on Julia Gillard's Office over unfair 'Alcopop Tax'', media release, 4 June 2009.

29. See for example, Public Health Association of Australia, 'PHAA – Support alcopops tax to reduce harm', media release, 22 June 2009; S Skov, 'Alcohol taxation policy in Australia: public health imperatives for action: A statement by the Royal Australasian College of

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comprehensive approach to reducing alcohol-related harm in Australia, they nevertheless maintain that results such as those presented above suggest that the tax represents ‘a move in the right direction’.³⁰ For example, the Royal Australian College of Physicians has argued that the increase ‘has a sound evidence base’ and that ‘preliminary evidence suggests that its effect has been positive’.³¹ Many health experts would appear to agree that the positives of the measure outweigh the negatives. Indeed, one group of health experts has gone so far as to state that ‘the federal government is to be applauded for its decision to re-introduce the ‘alcopops’ tax Bill to Parliament’.³²

Coalition policy position/commitment

After the Budget and during the debates on the validation bills there have been further considerations of the issues by the relevant political players, with Mr Turnbull being reported as indicating that the Coalition would give support to the bills, partially on the basis that he had argued in support of increased taxation of tobacco and would support the increased levies on alcopops as a matter of consistency³³ and also because the budgetary situation required its support.³⁴

The Coalition continues to assert that the alcopop excise increase is a ‘tax grab’, and not a health measure, as claimed by the Government. Nevertheless, on 22 June 2009, Shadow

Physicians’, *Medical Journal of Australia*, vol. 190, no. 8, 2009, pp. 437–439, viewed 22 June 2009,

http://parlinfo/parlInfo/download/library/jrnart/XOPT6/upload_binary/x0pt60.pdf;fileType=application/pdf#search=%22Alcohol%20taxation%20policy%20in%20%20public%20health%20imperatives%20for%20action%22; Australian Drug Foundation, ‘Australian experts unite in call for alcopop tax’, media release, 6 March 2009; T Chikritzhs et al. ‘The ‘alcopops’ tax: heading in the right direction’, *Medical Journal of Australia*, 2 March 2009, viewed 22 June 2009,

http://parlinfo/parlInfo/download/library/jrnart/UA2T6/upload_binary/ua2t60.pdf;fileType=application/pdf#search=%22the%20alcopops%20tax%20heading%20in%20the%20right%20direction%22

30. S Skov, pp. 437–439.

31. S Skov.

32. P Miller et al., ‘Health experts reject industry-backed funding for alcohol research’, *Medical Journal of Australia*, vol. 190, no. 12, p. 713. See also S Skov, ‘National alcohol policy after ‘alcopops’: what next?’, *Medical Journal of Australia*, vol. 190, no. 12, pp. 662–663.

33. Phillip Coorey, *Opposition will support alcopop tax increase*, 18 May 2009, viewed 22 July 2009, <http://www.smh.com.au/national/opposition-will-support-alcopop-tax-increase-20090517-b7el.html>

34. Michelle Grattan, Budget 2009: Turnbull to deny Rudd poll trigger, *The Age*, 16 May 2009, p.1, viewed 22 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F5OKT6%22>

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Minister for Health and Ageing, Peter Dutton indicated that, given the ‘dire budgetary context’, the Coalition would ‘act responsibly’ and ‘not oppose [the alcopop excise and customs tariff] Bills’.³⁵

Position of the independent Senators

When the amended ‘alcopops’ bills were defeated, both the Senators for the Greens and independent Senator Nick Xenophon urged the Government not to renege on its anti-binge drinking promises in the event that the Coalition ends up supporting the ‘alcopops’ excise and customs tariff rises on the reintroduction of the bills.³⁶

In an interview to ABC 2 on 23 June 2009 Nicola Roxon, the Minister for Health and Ageing indicated that the Government would deliver on those commitments.³⁷

Senator Fielding issued a Press Release in response to reports of the Coalition’s change of heart accusing the Coalition of being fearful of a double dissolution and arguing that this change of direction was inadvisable because ‘bad policy is always bad policy’.³⁸

Any consequences of failure to pass

There have been lengthy debates and discussions as to whether the failure to pass the alcopops bills a second time could constitute a double dissolution trigger. The bills are in a different form³⁹ to those initially introduced into the Parliament. However the government amendments which were approved in the House of Representatives and then the Senate’s consideration of the amended bills (in identical form to the bill as now reintroduced) would satisfy the constitutional requirement for a double dissolution—that

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35. P Dutton, ‘Excise and Customs Tariff Bills’, media release, 22 June 2009. Note that although the bills passed the House of Representatives, one Independent, two Nationals and two Liberal Party members opposed the bills.
 36. A Tillet, ‘Key Senators seek pledge on alcopops’, *West Australian*, 19 May 2009, p. 33, viewed 23 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FUVWT6%22>
 37. Transcript of ABC 2 Interview, 23 June 2009, viewed 23 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22emms%2Femms%2F140989%22>
 38. S Fielding, *Turnbull Crumbles Under The Pressure*, media release, 18 May 2009, viewed 20 June 2009, http://www.stevefielding.com.au/news/details/turnbull_crumbles_under_the_pressure/
 39. See further discussion about this point below.

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is, that a ‘proposed law’ has been rejected by the Senate and then reintroduced three months later and rejected again.⁴⁰

At an earlier stage of the debate there had been suggestions by the Clerk of the Senate, Mr Harry Evans, and members of the Coalition, in particular the Shadow Attorney-General, Senator George Brandis, that the reintroduced bills could not satisfy the constitutional requirements of section 57.⁴¹ They argued the passage of legislation intervening between the bills’ first introduction and their subsequent reintroduction (that is the legislation temporarily validating the collection of the excise) could prevent the reintroduced bills from constituting a constitutionally valid trigger for a double dissolution. This intervening event could operate to thwart section 57 even if the reintroduced bills satisfied the requirement for identity of text and the requisite passage of time before reintroduction. This issue was examined in a [Research Paper](#) which suggested that a difference based on a change in circumstance rather than a change in text is unlikely to constitute a barrier to the use of such a Bill as a trigger for a double dissolution.⁴²

Were the bills to be rejected again by the Senate they could, therefore, have constituted grounds for a request by the Prime Minister to the Governor-General for a double dissolution. Despite the extensive speculation, the matter is unlikely to arise with respect to these bills, both because the Coalition has indicated they will support the bills and because Mr Rudd has rejected the proposition that the Government might go to an early election.⁴³

40. Section 57 of the Constitution. The question of which amendments to a Bill will fall within the parameters of section 57 has been given some consideration and the consensus is that amendments made in the House of Representatives before the Senate’s consideration will fall within the definition of ‘the proposed law’ as required by the section.

With respect to the requirement for three months to have elapsed between the Senate’s rejection and the bills reintroduction, the bills were rejected on 18 March 2009 and have been reintroduced on 22 June 2009, a clear three months later.

41. H Evans, “Alcopops” Tax Bills – Constitution, Section 57, Advice to Senator G Brandis, LBD Subject Files. See also Glenn Milne, ‘Alcopops poll turns into fizzer’, *The Australian*, 20 April 2009. Senator Brandis is reported to have explained that Mr Evans’ advice draws upon the view of the ‘former First Parliamentary Counsel, Charles Comans QC’. See also AAP, *Alcopops legislation no double dissolution trigger: Turnbull*, 16 April 2009.

42. K Magarey, *Alcopops makes the House see double: ‘the proposed law’ in section 57 of the Constitution*, Research Paper no. 32, 12 May 2009, viewed 20 June 2009, www.aph.gov.au/library/pubs/rp/2008-09/09rp32.pdf

43. ‘Pigs might fly’ was Kevin Rudd’s response to claims that Labor is planning for an early election in November reported the AAP, ‘Rudd says ‘pigs’ to early election’, *The Canberra times*, 11 June 2009, viewed 22 June 2009, <http://www.canberratimes.com.au/news/national/national/general/rudd-says-pigs-to-early-election/1537626.aspx> and ‘Pigs might fly before early poll – Rudd’ *Herald Sun*, June 10

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At the time of writing, although the Bills seem likely to pass unobstructed through the Senate, the following timeframes are of relevance to any bills which could constitute a double dissolution trigger. The current House of Representatives was elected on 24 November 2007. Its term is for three years, timed from its first sitting after the election, 12 February 2008, so the House will expire through the effluxion of time on 11 February 2011. Under the timetable for elections set out in the Constitution and the *Commonwealth Electoral Act 1918*, the last possible date for a House of Representatives election is 16 April 2011.⁴⁴

A double dissolution trigger does not have to be used as soon as it is created, but it must occur six months before the end of the term of the House. This means that the announcement of a double dissolution would have to take place by 11 August 2010. After the double dissolution has occurred there can be a passage of time before the subsequent election must take place, so that a double dissolution election could take place as late as 16 October 2010.⁴⁵

Financial implications

According to the Explanatory Memorandum financial implications of the increased tax on certain alcoholic beverages not exceeding 10 per cent by volume of alcohol (both through excise and excise-equivalent customs tariff increases) is predicted to be:⁴⁶

<i>Revenue</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>
Australian Taxation Office	Nil	\$31.79m	\$254.68m	\$259.89m	\$264.96m
Australian Customs Service	Nil	\$36.65m	\$144.26m	\$109.61m	\$132.94m
Impact on fiscal balance	Nil	\$68.44m	\$398.93m	\$369.5m	\$397.9m

2009, viewed 22 June 2009, <http://www.news.com.au/heraldsun/story/0,21985,25616404-5005961,00.html>

44. See further A Green, 'An Early Double Dissolution?', *ABC Elections*, May 14 2009, viewed 22 June 2009, <http://blogs.abc.net.au/antonygreen/2009/05/by-announcing-i.html> ;

R Lundie, *Australian elections timetable*, Background Note, 4 June 2008, Parliamentary Library, 2008, viewed 10 June 2009, http://www.aph.gov.au/Library/pubs/BN/2008-09/Aust_elections.pdf.

45. A Green; and R Lundie.

46. Explanatory Memorandum, Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2] and Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 [No. 2], p. 3.

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Similarly, financial implications of the amendment to the definition of beer and grape wine product is predicted to be:⁴⁷

<i>Revenue</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>
Impact on fiscal balance	Nil	Nil	\$30m	\$30m	\$30m

Main provisions

Item 1 of Schedule 1 of the Bill amends the Schedule to the Excise Tariff Act to increase the rate under item 2 from \$39.36 to \$66.67.

Item 1 of Schedule 2 of the Bill amends the Excise Tariff Act to repeal the existing definition of *'beer'* and substitutes the proposed definition. The purpose of these amendments is to ensure that products which mimic spirit-based RTDs are subject to the same tax rate as RTDs.

The proposed definition sets a combination of minimum limits on bitterness and maximum limits on sugar content that must be present in the final beverage. Amongst other things, *'beer'*:

- can contain hops, extracts of hops or other bitters such that it has international bitterness units of not less than 4.0: **proposed paragraph (b)**
- but only must not contain more than 4 per cent weight of sugars:⁴⁸ **proposed paragraph (c)**
- must not have had artificial sweetener added to it: **proposed paragraph (d)**
- may have added to it at any time other substances, including flavours⁴⁹ but any substance which contains alcohol must not add more than 0.5 per cent to the total volume of the final beverage: **proposed paragraph (e)**, and
- will contain more than 1.15 per cent by volume of alcohol: **proposed paragraph (g)**.

Item 3 of Schedule 2 is an applications provision which provides, for the avoidance of doubt, that the amendments in the Excise Tariff Act apply to beverages manufactured or produced on or after the commencement of the item.

47. Explanatory Memorandum, p. 4.

48. **Item 2 of Schedule 2** defines *'sugar'* as monosaccharide or disaccharide.

49. For example chilli or lime: Explanatory Memorandum, p. 11.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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