

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



Alert Digest

No. 7 of 2008

27 August 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 D Cameron

Senator J Collins

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.

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

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Committee under its terms of reference is invited to do so.

Bills restored to the *Notice Paper*

On 14 May 2008, on the motion of Senator Bob Brown, a bill introduced in the Senate in a previous Parliament was restored to the *Notice Paper*.

Plastic Bag Levy (Assessment and Collection) Bill 2002

See Alert Digest No. 13 of 2002

On 15 May 2008, on the motion of Senator Kirk, a bill introduced in the Senate in the previous Parliament was restored to the *Notice Paper*.

Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2007

See Alert Digest No. 12 of 2007

On 19 June 2008, on the motion of Senator Stott Despoja, also on behalf of Senator Nettle, a bill introduced in the Senate in the previous Parliament was restored to the *Notice Paper*.

Pregnancy Counselling (Truth in Advertising) Bill 2006

See Alert Digest No. 1 of 2007

The Committee has dealt with these bills in previous Alert Digests, as indicated above.

A New Tax System (Luxury Car Tax Imposition—Customs) Amendment Bill 2008 and related bills

Introduced into the House of Representatives on 26 May 2008

Portfolio: Treasury

Background

The Committee considered this package of four bills in *Alert Digest No. 4 of 2008*, making no comment. A letter has since been received from the Australian Automobile Dealers Association drawing the Committee's attention to issues in relation to retrospectivity. A copy of the letter is included at the end of this Alert Digest, for the information of readers. The Committee provides the following comments in response to the issues raised.

Retrospective application

Schedule 1, item 2

This package of four bills amends various Acts to increase the rate of luxury car tax payable from 25 per cent to 33 per cent, effective from 1 July 2008.

At the time that the committee considered the bills (4 June 2008), there was no retrospectivity, as the measures were not due to commence until 1 July 2008. As such, the Committee made no comment on these bills.

Subsequently, the passage of the bills through the Senate was delayed, with the bills being referred to the Senate Economics Committee for inquiry, with the committee not to report before 26 August 2008. As a result, the measure will now apply retrospectively, from 1 July 2008.

As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the Committee does not generally comment adversely where the bill implements a tax or revenue measure in respect of which the relevant Minister has published a date from which the measure is to apply, and the publication took place prior to the date of application. This is the case in respect of these bills.

As such, while the Committee is sympathetic to the concerns raised by the Australian Automobile Dealers Association, it does not consider that these incidences of retrospectivity impinge on the Committee's terms of reference.

In the circumstances, the Committee makes no further comment on these provisions.

Aviation Legislation Amendment (2008 Measures No. 1) Bill 2008

Introduced into the House of Representatives on 26 June 2008

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Background

This bill amends the *Aviation Transport Security Act 2004* to allow regulations to be made under the Aviation Transport Security Regulations 2005, which would permit Air Security Officers to lawfully discharge their firearms on board an aircraft in Australian territory or on board an Australian aircraft in foreign territory.

The bill also makes consequential amendments to the *Civil Aviation Act 1988*.

The Committee has no comment on this bill.

Aviation Legislation Amendment (International Airline Licences and Carriers' Liability Insurance) Bill 2008

Introduced into the House of Representatives on 26 June 2008

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Background

This bill amends the *Air Navigation Act 1920*, the *Civil Aviation Act 1988* and the *Civil Aviation (Carriers' Liability) Act 1959* to update administrative processes for two regulatory aviation industry programs – the system of International Airline Licences (IALs) and the system of mandatory insurance for passenger-carrying airlines. Among other things, the bill:

- moves the regulatory framework for IALs into the *Air Navigation Regulations 1947*, which will have the capacity to deal with the granting, variation, suspension and cancellation of international airline licences;
- provides for all existing IALs to be cancelled after a transition period, requiring airlines to apply for new IALs;
- provides for merits review by the Administrative Appeals Tribunal of any decision to refuse an IAL application, grant an IAL subject to a condition, suspend or cancel an IAL, or to vary or refuse to vary an IAL; and
- refines the regulatory processes associated with Australia's system of compulsory non-voidable insurance for passenger-carrying air operators and allows the Civil Aviation Safety Authority to enforce the requirements as part of their management of safety issues via the Air Operator's Certificate process.

The bill also makes consequential amendments to the *Adelaide Airport Curfew Act 2000*, the *Aircraft Noise Levy Collection Act 1995* and the *Civil Aviation Act 1988* and includes application, saving and transitional provisions.

The Committee has no comment on this bill.

Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008

Introduced into the House of Representatives on 25 June 2008

Portfolio: Attorney-General

Background

This bill amends the *Family Law Act 1975* to provide for opposite-sex and same-sex de facto couples to access the federal family law courts on property and maintenance matters. The bill relies on referrals by States to the Commonwealth in accordance with subsection 51(xxxvii) of the Constitution.

In addition, the bill provides for amendments relating to financial agreements between married couples and superannuation splitting, and for an amendment providing for certificates given in relation to family dispute resolution. It also makes consequential amendments relating to de facto financial matters to the *A New Tax System (Family Assistance) Act 1999*, the *Bankruptcy Act 1966*, the *Child Support (Assessment) Act 1989*, the *Child Support (Registration and Collection) Act 1988*, the *Federal Magistrates Act 1999*, the *First Home Saver Accounts Act 2008*, the *Income Tax Assessment Act 1997*, the *Proceeds of Crime Act 2002*, the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*.

The bill also contains transitional provisions.

Retrospective commencement

Schedule 4, item 2

Item 8 in the table to subclause 2(1) of this bill provides that the amendment proposed in item 2 of Schedule 4 will commence retrospectively on 1 January 2003, immediately after the commencement of section 330 of the *Proceeds of Crime Act 2002*.

As a matter of practice, the Committee draws attention to any bill which 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 (page 5) that the amendment is solely for the purpose of rectifying a technical error in the *Proceeds of Crime Act 2002* and does not make any change to the substance of the law.

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

Inappropriate delegation of legislative power Schedule 1, item 33

New sections 39C and 39D of the *Family Law Act 1975*, to be inserted by item 33 of Schedule 1, would permit the Governor-General, by Proclamation, to fix a day on and after which a de facto financial cause may not be commenced in the Supreme Court of the Northern Territory, or in courts of summary jurisdiction in various States or Territories. New section 39E of the same Act, also to be inserted by item 33 of Schedule 1, would permit the Governor-General, by Proclamation, to declare that a Proclamation under section 39C or 39D is revoked on and from a specified date.

It appears, both from subsequent provisions of the bill and from a perusal of the explanatory memorandum, that at least one reason for such a Proclamation would be if a State no longer referred its powers to legislate on such matters to the Commonwealth, or subsequently did refer such powers to the Commonwealth. The Committee notes, however, that the explanatory memorandum (paragraph 67) refers to these proposed sections, but does not indicate the reason for their inclusion in the bill. The Committee **seeks the Attorney-General's advice** about the reason for the conferral of this apparently unfettered discretion on the Governor-General.

Pending the Attorney-General's advice, the Committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Financial Framework Legislation Amendment Bill 2008

Introduced into the House of Representatives on 26 June 2008

Portfolio: Finance and Deregulation

Background

This bill amends the *Financial Management and Accountability Act 1997* (FMA Act) with the aim of simplifying and clarifying the financial management framework applying to Australian Government agencies that are governed by the Act. Among other things the bill:

- allows non-Commonwealth entities to make payments of public money, where the relevant arrangement is authorised;
- clarifies that the obligation on chief executives to promote the ‘proper use’ of Commonwealth resources includes an implied capacity for chief executives to enter contracts;
- explicitly recognises that Ministers responsible for FMA Act agencies may request information relating to that agency’s operations; and
- clarifies the way that payments supported by appropriations can occur between and within FMA agencies; updates penalty provisions; clarifies the application of the *Legislative Instruments Act 2003*; moves certain requirements to the FMA regulations; and removes two archaic bodies corporate to simplify how investments are made on behalf of the Commonwealth.

In addition, the bill corrects references in the *Reserve Bank Act 1959*; amends the *Albury-Wodonga Development Act 1973* to place that organisation under the *Commonwealth Authorities and Companies Act 1997*; makes an appropriations-related amendment to an explanatory note in the *Public Service Act 1999*; and makes consequential amendments to the *Defence Home Ownership Assistance Scheme Act 2008*.

The bill also contains application, saving and transitional provisions.

The Committee has no comment on this bill.

Independent Reviewer of Terrorism Laws Bill 2008

Introduced into the Senate on 23 June 2008

By Senators Troeth and Humphries

Background

This bill establishes the position of ‘Independent Reviewer of Terrorism Laws’ to review the operation, effectiveness and implications of laws relating to terrorist acts.

The bill specifies:

- the functions of the independent reviewer, the process for conducting a review, and reporting requirements; and
- the terms and conditions of appointment of the independent reviewer, the basis for termination of appointment, and requirements in respect of the disclosure of interests that the Independent Reviewer has or acquires.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Senator’s bill, was accompanied only by a second reading speech 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 an explanation of the intent and operation of the proposed amendments, preferably in the form of an explanatory memorandum. 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 this case, the Committee notes that the second reading speech provides some explanation of the intent and operation of the proposed amendments.

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

Migration Legislation Amendment Bill (No. 1) 2008

Introduced into the Senate on 25 June 2008

Portfolio: Immigration and Citizenship

Background

This is an omnibus bill that amends the *Migration Act 1958*, the *Customs Act 1901*, the *Australian Citizenship Act 2007* and the *Australian Citizenship (Transitionals and Consequentials) Act 2007*, with a view to clarifying and improving the effectiveness of Migration and Citizenship legislation.

Schedule 1 of the bill reinstates effective time limits for applying to the courts for judicial review of migration decisions and streamlines the procedures for notifying parties of a decision of the Migration Review Tribunal and the Refugee Review Tribunal, by removing the requirement for the tribunals to 'hand down' their decisions. It also creates a new position of Deputy Principal Member for the Migration Review Tribunal.

Schedule 2 of the bill makes a number of amendments aimed at strengthening border protection provisions, including measures to: establish an infringement notice regime as an alternative to prosecution for operators of aircraft and ships who fail to provide advance passenger and crew reports; clarify that reports must make disclosures in relation to each passenger and crew member individually; allow the Migration Regulations 1994 to prescribe the timeframes for submitting reports; make passengers and crew on 'round trip cruises' subject to immigration clearance on their return to Australia; and clarify when a special purpose visa ceases.

Schedule 3 makes a number of minor amendments to clarify certain provisions relating to visas and to harmonise a number of offences in the *Migration Act 1958* with the *Criminal Code*.

Schedule 4 clarifies that the character cancellation provisions apply to all temporary and permanent transitional visas and provides validation for all past character cancellation decisions in relation to such visas. It also includes provisions to ensure that illegal foreign fishers and environmental offenders who were granted a bridging visa or criminal justice visa can be removed from Australia and provides that, subject to certain requirements, the Minister

is not obliged to give documents to an authorised recipient if he or she is not a registered migration agent.

Schedule 5 amends the *Australian Citizenship Act 2007* and the *Australian Citizenship (Transitionals and Consequential) Act 2007* to clarify the meaning of certain provisions and to ensure consistency with Australia's obligations under the *United Nations Convention on the Reduction of Statelessness 1961*.

The bill also contains application and transitional provisions.

Retrospective commencement Schedule 5, items 17 and 18

Item 8 in the table to subclause 2(1) of this bill provides that the amendments proposed in items 17 and 18 of Schedule 5 will commence retrospectively on 1 July 2007, immediately before the commencement of items 5B and 7 of Schedule 3 to the *Australian Citizenship (Transitionals and Consequential) Act 2007*.

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. However, the Committee notes that in this instance the explanatory memorandum advises that the current amendments are included for the purpose of clarifying amendments made in the earlier Act, in order to ensure that they did not operate to the disadvantage of any person.

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

National Greenhouse and Energy Reporting Amendment Bill 2008

Introduced into the House of Representatives on 26 June 2008
Portfolio: Climate Change and Water

Background

This bill amends the *National Greenhouse and Energy Reporting Act 2007* with a view to better reflecting the original policy intent of the Act and to improving the administration of the Act. The bill also expands the number of matters that may be published by the Greenhouse and Energy Data Officer, with the aim of improving public access to information on corporate use of energy and greenhouse gas emissions.

The Committee has no comment on this bill.

Save Our Solar (Solar Rebate Protection) Bill 2008

Introduced into the House of Representatives on 23 June 2008

By Mr Hunt

Background

This bill requires the Minister for the Environment, Heritage and the Arts to determine, by legislative instrument, new guidelines for the operation of the *Solar Homes and Communities Plan* and provides that these guidelines must include:

- details of the eligibility requirements to be satisfied by a person or organisation in order to receive a payment under the plan; and
- the types of solar systems to which the plan will apply.

The bill also outlines the responsibilities of the Minister and the Secretary in respect of the plan, specifies principles of administration, and provides for the Governor-General to make regulations.

The Committee has no comment on this bill.

Save Our Solar (Solar Rebate Protection) Bill 2008 [No. 2]

Introduced into the Senate on 24 June 2008

By Senator Johnston

Background

This bill requires the Minister for the Environment, Heritage and the Arts to determine, by legislative instrument, new guidelines for the operation of the *Solar Homes and Communities Plan* and provides that these guidelines must include:

- details of the eligibility requirements to be satisfied by a person or organisation in order to receive a payment under the plan; and
- the types of solar systems to which the plan will apply.

The bill also outlines the responsibilities of the Minister and the Secretary in respect of the plan, specifies principles of administration, and provides for the Governor-General to make regulations.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Senator's bill, was accompanied only by a second reading speech 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 an explanation of the intent and operation of the proposed amendments, preferably in the form of an explanatory memorandum. 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 this case, the Committee notes the second reading speech provides some explanation of the intent and operation of the proposed amendments.

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

Tax Laws Amendment (2008 Measures No. 4) Bill 2008

Introduced into the House of Representatives on 26 June 2008

Portfolio: Treasury

Background

Schedule 1 to this bill amends the *Income Tax Assessment Act 1936* to provide relief from capital gains tax to private health insurance policy holders when their insurer converts, by demutualising, from being a *not for profit* to a *for profit* insurer, provided the insurer's conversion is approved by the Private Health Insurance Administration Council. The amendments apply to demutualisations that occur on or after 1 July 2007.

Schedule 2 amends the *Income Tax Assessment Act 1936* to change the definition of 'family' and to remove the ability for family trusts to make a one-off variation to the test individual specified in a family trust election (other than specifically in relation to the 2007/08 income year or a marriage breakdown).

Schedule 3 makes technical corrections and other minor amendments to a range of tax laws.

The bill also contains application, consequential and transitional provisions.

Retrospective application

Schedule 1

Item 12 of Schedule 1 provides that the amendments to be made by that Schedule apply 'in relation to demutualisations occurring on and after 1 July 2007.' There is consequently a measure of retrospectivity in this application provision.

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, however, that the

explanatory memorandum (page 3) states that this application provision ‘will ensure that private health insurers that demutualise prior to these amendments receiving Royal Assent may qualify for the relief [to be provided by this measure].’

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

Retrospective application Schedule 3, item 10 and item 13

Item 11 of Schedule 3 provides that the amendment to be made by item 10 of that Schedule ‘applies to assessments [of tax] for the 2006-07 year of income and later income years.’ Similarly, item 14 of Schedule 3 provides that the amendment to be made by item 13 ‘applies to assessments [of tax] for the 2006-07 year of income and later income years’.

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. However, the Committee notes from the explanatory memorandum (page 4) that these retrospective application provisions do not disadvantage taxpayers.

In the circumstances, the Committee makes no further comment on these provisions.

Telecommunications Interception Legislation Amendment Bill 2008

Introduced into the House of Representatives on 25 June 2008

Portfolio: Attorney-General

Background

This bill amends the *Surveillance Devices Act 2004* and the *Telecommunications (Interception and Access) Act 1979* to address legal uncertainties, arising from the Federal Court's considerations in *Hong Kong Bank of Australia Ltd v Australian Securities Commission* (1992) 108 ALR 70, about using legislative definitions to confer power. The amendments expressly confer power on office holders to make authorisations for the purposes of the Acts and treat previous authorisations as if they had been made under those powers.

The bill also makes several technical amendments to the *Telecommunications (Interception and Access) Act 1979* to reflect Victoria's enactment of a separate statute for the Office of Police Integrity, to maintain the currency of the telecommunications interception and access regime, and to delete references in the Act to sections previously removed by the *Telecommunications (Interception) Amendment Act 2006*.

The Committee has no comment on this bill.

Trade Practices Legislation Amendment Bill 2008

Introduced into the House of Representatives on 26 June 2008

Portfolio: Treasury

Background

This bill amends the *Trade Practices Act 1974* to clarify the operation of section 46 in respect of anti-competitive unilateral conduct, such as predatory pricing. Schedule 1:

- clarifies the role of recoupment in predatory pricing cases under section 46;
- clarifies the meaning of the term ‘take advantage’ for the purposes of section 46; and
- confers jurisdiction on the Federal Magistrates Court to hear private matters arising under section 46.

Schedule 2 of the bill makes amendments to the version of section 46 found in the competition code, to correspond with the amendments made by Schedule 1 of this bill.

Schedule 3 amends the *Trade Practices Act 1974* and the *Australian Securities and Investments Commission Act 2001* to:

- require that at least one of the Deputy Chairpersons of the Australian Competition and Consumer Commission (ACCC) has knowledge of, or experience in, small business matters;
- repeal the price thresholds that currently limit the protection afforded by Section 51AC of the Trade Practices Act against unconscionable conduct in business transactions; and
- clarify the ACCC’s information gathering powers.

The bill also contains application provisions.

The Committee has no comment on this bill.

COMMENTARY ON AMENDMENTS TO BILLS

Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008

On 25 June 2008, the Senate agreed to seven amendments to the bill, none of which fall within the Committee's terms of reference. The Senate also requested the House of Representatives to make one amendment. On 25 June 2008, the House of Representative made the requested amendment, which did not fall within the Committee's terms of reference.

Reserve Bank Amendment (Enhanced Independence) Bill 2008

On 23 June 2008, the Senate agreed to 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 42nd Parliament.

Bills introduced with standing appropriation clauses – 42nd Parliament

*Indicates passed by Senate	Bills and Clauses
*	Commonwealth Securities and Investment Legislation Amendment Bill 2008 — Schedule 1, item 10, subsection 5BA(7)
*	Defence Home Ownership Assistance Scheme Bill 2008 — Clause 84
*	Dental Benefits Bill 2008 — Clause 65
*	Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008 — Schedule 1, item 29.
*	Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Bill 2008 — Schedule 1, item 79, section 94B (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
	Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008 — Schedule 5, item 141, section 65A.
	Protection of the Sea Legislation Amendment Bill 2008 — Schedule 1, item 20, section 46N.
*	Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008 — Schedule 1, item 1
*	Wheat Export Marketing Bill 2008 — 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
*	<p>Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Bill 2008 — 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).</p>



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Senator Chris Ellison
Chair
Scrutiny of Bills Committee
The Senate
Parliament House
CANBERRA ACT 2600

RECEIVED

26 JUN 2008

Senate Standing Cttee
for the Scrutiny of Bills

Dear Senator Ellison

I write in relation to the Senate's consideration of four bills which, if passed by the Parliament, will increase the rate of Luxury Car Tax (LCT) from 25 per cent to 33 per cent. As you will be aware those bills have been referred to the Senate Economics Committee for inquiry and report not before 26 August 2008. The bills state that the new rate of LCT is to apply from 1 July 2008. Clearly the legislation to give effect to that change is not going to be passed by the Parliament prior to 1 July.

The Treasurer has however this week announced that the Government remains committed to a 1 July 2008 commencement date for the higher rate of LCT. My Association and its new vehicle dealer members do not support an increase in the LCT; in fact the Association believes that the LCT is discriminatory and should be removed. That said, we also understand that the Government has a right to put legislation before the Parliament and for the Parliament to debate, scrutinise and review legislation.

On this occasion, new motor vehicle dealers and their customers are in a very difficult circumstance. It will be many weeks, and most likely, months before the legislation is considered by the Senate and the Senate may accept, amend or reject the legislation; as is its right. The Commissioner of Taxation has made it clear that should the legislation be passed by the Parliament, the tax will apply retrospectively and dealers (not the customers) will be liable to pay the additional LCT on all vehicles delivered on or after 1 July 2008; irrespective of whether that tax has been collected from the customer by the dealer. As matters currently stand, and will continue to do so until the Acts are changed, no customer is legally obliged to pay the higher rate of LCT 'upfront'. Many vehicles may in fact be delivered to customers weeks in advance of the legislation being amended; yet dealers will have had no legal authority to collect the higher rate of tax. It is the retrospective nature of the legislation which causes us a great deal of concern; and the length of the period for which there will be market uncertainty.

My purpose in writing to you as Chair of the Senate Scrutiny of Bills Committee is to ask whether your Committee considers the retrospective element of a taxation bill to be inconsistent with the principles for legislation as proclaimed by your Committee.

Those principles being whether bills which come before the Senate:

- (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.

I would be grateful if you would therefore consider the Luxury Car Tax bills, and particularly the retrospective aspect of them, against the principles above. I would welcome an opportunity to discuss this issue with you at your convenience.

I look forward to hearing from you.

Yours sincerely

Michael Delaney

MICHAEL DELANEY
Executive Director

26 June 2008

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	
Bills dealt with in 2007							
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	
Bills introduced 2008							
<i>Aged Care Amendment (2008 Measures No. 1) Act 2008</i>	1(12.3.08)	13.2.08	14.2.08	Health and Ageing	13.3.08	4.8.08	7(27.8.08)
<i>Australian Crime Commission Amendment Act 2007</i>	3(14.5.08)	19.9.07	18.9.07	Home Affairs	15.5.08	20.6.08	6(25.6.08)
Australian Energy Market Amendment (Minor Amendments) Bill 2008	3(14.5.08)	20.3.08	23.6.08	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	19.6.08	6(25.6.08)
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	23.6.08	6(25.6.08)
Drink Container Recycling Bill 2008	2(19.3.08)		13.3.08	Senator Fielding	20.3.08		
Environment Protection and Biodiversity Conservation Amendment (Control of Power Station Emissions) Bill 2008	6(25.6.08)		19.6.08	Senator Allison	26.6.08		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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)
Excise Tariff Amendment (Condensate) Bill 2008 Amendment	5(18.6.08)	15.5.08	16.6.08	Treasury	19.6.08		
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	18.6.08	6(25.6.08)
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)
Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008	6(25.6.08)	18.6.08		Environment, Heritage and the Arts	26.6.08	22.7.08	7(27.8.08)
Horse Disease Response Levy Bill 2008	1(12.3.08)	21.2.08		Agriculture, Fisheries and Forestry	13.3.08	9.7.08	7(27.8.08)
Horse Disease Response Levy Collection Bill 2008	1(12.3.08)	21.2.08		Agriculture, Fisheries and Forestry	13.3.08	9.7.08	7(27.8.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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		
National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008	4(4.6.08)	29.4.08	16.6.08	Treasury	5.6.08	24.6.08	6(25.6.08)
Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008	6(25.6.08)	18.6.08		Resources, Energy and Tourism	25.6.08	1.8.08	7(27.8.08)
Offshore Petroleum (Annual Fees) Amendment (Greenhouse Gas Storage) Bill 2008	6(25.6.08)	18.6.08		Resources, Energy and Tourism	25.6.08	1.8.08	7(27.8.08)
Offshore Petroleum (Registration Fees) Amendment (Greenhouse Gas Storage) Bill 2008	6(25.6.08)	18.6.08		Resources, Energy and Tourism	25.6.08	1.8.08	7(27.8.08)
Offshore Petroleum (Safety Levies) Amendment (Greenhouse Gas Storage) Bill 2008	6(25.6.08)	18.6.08		Resources, Energy and Tourism	25.6.08	1.8.08	7(27.8.08)
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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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	24.6.08	6(25.6.08)
<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)