SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

TWELFTH REPORT

OF

2008

12 November 2008

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MEMBERS OF THE COMMITTEE

Senator the Hon H Coonan (Chair)
Senator M Bishop (Deputy Chair)
Senator D Cameron
Senator J Collins
Senator R Siewert
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.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TWELFTH REPORT OF 2008

The Committee presents its Twelfth Report of 2008 to the Senate.

The Committee draws the attention of the Senate to clauses of the following bills which contain provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Dairy Adjustment Levy Termination Bill 2008

National Measurement Amendment Bill 2008 *****

National Rental Affordability Scheme Bill 2008

Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008

***** Although this bill has not yet been introduced in the Senate, the Committee may report on the proceedings in relation to this bill, under standing order 24(9).

Dairy Adjustment Levy Termination Bill 2008

Introduction

The Committee dealt with this bill in *Alert Digest No. 11 of 2008*. The Minister for Agriculture, Fisheries and Forestry responded to the Committee's comments in a letter dated 6 November 2008. A copy of the letter is attached to this report.

Extract from Alert Digest No. 11 of 2008

Introduced into the House of Representatives on 24 September 2008
Portfolio: Agriculture, Fisheries and Forestry

Background

This bill amends the *Dairy Produce Act 1986* to finalise the Dairy Industry Adjustment Program by terminating the Dairy Adjustment Levy, winding-up the Dairy Structural Adjustment Fund, and terminating the Dairy Adjustment Authority. The Bill seeks to ensure that all surplus monies collected under the Dairy Adjustment Levy are returned to the Commonwealth.

The bill repeals the *Dairy Adjustment Levy (Customs) Act 2000*, the *Dairy Adjustment Levy (Excise) Act 2000*, and the *Dairy Adjustment Levy (General) Act 2000* which set the dairy adjustment levy rate; and makes consequential amendments to the *Income Tax Assessment Act 1997*, the *Remuneration Tribunal Act 1973* and the *Social Security Act 1991*.

The bill also contains an application provision.

Delegation of legislative power
Schedule 1, items 2 and 6

Item 3 in the table to subclause 2(1) provides that Schedule 2 is to commence on the day after the day declared for the purposes of subclause 94(1) of Schedule 2 to the *Dairy Produce Act 1986*, while item 5 in the same table provides that item 3 of Schedule 3 is to commence immediately after the day specified for the purposes of subclause 55(2) of Schedule 2 to the *Dairy Produce Act 1986*.

New subclauses 94(1) and 55(2) are added to the *Dairy Produce Act 1986* by items 6 and 2 respectively of Schedule 1 to the bill, and reveal that the Minister has an apparently unfettered discretion to declare when the 'levy termination day' (for the purposes of the *Dairy Produce Act 1986*) occurs, and when the Dairy Adjustment Authority ceases to exist.

Since these two determinations are clearly legislative in character, the Committee **seeks the Minister's advice** about the reason for the conferral of this apparently unfettered discretion on the Minister to undertake legislative acts. The Committee notes that the only limit on the exercise of the Minister's discretion is that it must be done by legislative instrument, and is therefore subject to review by the Senate Standing Committee on Regulations and Ordinances. Nevertheless, the Committee also **seeks the Minister's advice** whether limits on the exercise of the Minister's discretion to make the relevant declarations might be included in the bill.

Pending the Minister'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, and insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee's terms of reference.

Relevant extract from the response from the Minister

The Bill proposes amendments to the *Dairy Produce Act 1986* that will have the effect of closing the Dairy Industry Adjustment Program. It amends the Act to enable the minister to more accurately determine a date to terminate the Dairy Adjustment Levy, and to close the Dairy Adjustment Authority and the Dairy Structural Adjustment Fund.

The complexity of removing the levy and closing the authority requires the Australian Government to retain some flexibility in determining specific dates for both actions. This was taken into consideration in drafting the Bill and resulted in the mechanism proposed. The Office of Parliamentary Counsel, in consultation with drafting instructors in the Department of Agriculture, Fisheries and Forestry (the department) and with the Attorney-General's Department, has determined that the ministerial action meets the definition of a 'legislative instrument' under section 5 of the *Legislative Instruments Act 2003.*

The Bill provides the minister with additional guidance in terminating the levy to that already in the Act. The Bill also provides legislative guidance for the closure of

the authority while still allowing any outstanding functions to be performed. I do not see a need to include any further limits on the exercise of the minister's powers than already proposed in the Bill and both of these actions will enjoy the scrutiny of the parliament.

Levy termination date

The Act already provides the minister with the power to declare the levy termination day by notice published in the *Government Notices Gazette.* The Bill makes a simple amendment to an existing power to ensure excess collections are minimised. The alternative, under existing arrangements, would be likely to result in the collection of around $50 million more than is needed for the adjustment program.

To achieve this, the Bill enables the minister, in setting the levy tennination day, to take account of levy that has been paid by consumers but not yet receipted into the adjustment fund and to reduce the notice period for levy collection from 28 to seven days. The minister would not have unfettered discretion in declaring the levy termination date, as the Bill provides that that the minister would need to be satisfied that sufficient revenue has been collected to cover remaining costs associated with the adjustment fund.

The mechanism to remove the levy proposed by the Bill better balances the desire to ensure that consumers do not continue to pay the levy on drinking milk after all costs associated with the adjustment program have been met against the need to ensure sufficient revenue is collected.

Cessation of the Dairy Adjustment Authority

The Bill also provides for the minister, in finalising the adjustment program, to close the Dairy Adjustment Authority (the authority). The authority was established for the purpose of making eligibility determinations for payments to farmers under the two largest components of the adjustment program. With the exception of finalising its 2007/08 reporting requirements and a small number of other minor outstanding issues, it has completed its job.

The legislation currently makes no provision for closing the authority. The Bill proposes measures to avoid a redundant statutory authority continuing for an indefinite period, with all of the associated reporting requirements.

The Bill does not specify an exact closing date for the authority. This will enable authority staff to progress the small number of remaining unclaimed monies cases, complete the authority's 2007-08 reporting obligations and transfer authority records to the department.

Once these matters are finalised, or substantially progressed, the Bill provides for the minister to declare the authority closed at which time the authority's functions, including reporting requirements, will be transferred to the Secretary of the department. This reflects the current situation where the secretary is the sole member of the authority.

Thank you for raising these matters with me. I trust this information is of assistance to the committee.

The Committee thanks the Minister for this comprehensive response, which addresses the Committee's concerns.

National Measurement Amendment Bill 2008

Introduction

The Committee dealt with this bill in *Alert Digest No. 11 of 2008*. The Minister for Innovation, Industry, Science and Research responded to the Committee's comments in a letter dated 30 October 2008. A copy of the letter is attached to this report.

Extract from Alert Digest No. 11 of 2008

Introduced into the House of Representatives on 24 September 2008
Portfolio: Innovation, Industry, Science and Research

Background

This bill amends the *National Measurement Act 1960* to give effect to the decision by the Council of Australian Governments (COAG) to introduce a national system of trade measurement, based on the current trade measurement systems of the states and territories. The bill also introduces some measures that have been approved by the Ministerial Council on Consumer Affairs (MCCA) for inclusion in the uniform state and territory trade measurement legislation but have not been introduced in all jurisdictions.

The bill also contains application and transitional provisions.

Strict liability
Schedule 1, item 65, proposed new subsections 18MH(5) and 18MI(4)

Proposed new subsections 18MH(5) and 18MI(4) of the *National Measurement Act 1960*, to be inserted by item 65 of Schedule 1, would create offences of strict criminal liability if a person refuses or fails to comply with a requirement to answer questions or produce books, records or documents requested by an inspector, or to provide an English translation of a book, record or document under subsections 18MH(2) or (3) or 18MI(2), respectively. Proposed new subsections 18MH(4) and 18MI(3) create the same offence, but make it subject to the prosecution proving that the alleged offender intended to commit the offence.

The Committee is not aware of any previous example in legislation of a refusal or failure to provide information to an official being an offence of strict liability, thereby rendering the offender's intentions irrelevant. The Committee notes that the only explanation given in the explanatory memorandum (apart from the general explanation given at page 12, referred to above) is at paragraph 562: 'Proposed subsection 18MH(4) provides that a person commits an offence if he or she refuses or fails to comply with a requirement under subsections 18MH(2) or (3), for which the penalty is 200 penalty units (currently $22,000). Proposed subsection 18MH(5) creates an equivalent strict liability offence, with a penalty of 40 penalty units (currently $4,400). Both provisions are intended to deter people from refusing or failing to comply with the section.' The Committee also notes that paragraph 566, which refers to proposed subsections 18MI(3) and 18MI(4), offers an analogous explanation.

The Committee considers that, despite the general explanation of the reasons for strict liability in the bill, these particular provisions come within that general comment only insofar as the penalty for the strict liability offence is much less than for the fault-based offence. Where a bill creates strict liability offences, the Committee considers that clear reasons for their inclusion should be set out in the explanatory memorandum. The Committee **seeks the Minister's advice** as to the reasons for inclusion of the strict liability offences in proposed new subsections 18MH(5) and 18MI(4) of the bill.

Pending the Minister'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.

Relevant extract from the response from the Minister

> In addition to the general comments provided at pages 10 and 11 of the Explanatory Memorandum to the *National Measurement Amendment Bill 2008*, the following particular considerations make it appropriate to impose strict liability under ss 18MH(5) and 18MI(4).
>
> The imposition of strict liability is likely to significantly enhance the effectiveness of enforcement of ss 18MH and 18MI. Trade measurement inspectors cover a large range of industry types from small corner stores to large multi-national corporations. Subsections 18MH(5) and 18MI(4) provide flexibility when dealing with low key issues with smaller businesses where it is not in the public interest to seek court action for a minor offence of not answering questions or producing documents where

the detriment caused by the offence is relatively small (for example where a corner store sells a small number of underweight products and the trader refuses to answer questions or produce documents, and so hinders the inspector in the course of the investigation).

The imposition of strict liability (with the possibility of issuing infringement notices rather than pursuing prosecution) allows for such relatively low level breaches to be dealt with in a way that directly encourages compliance with the Act, without the need for onerous penalties to be imposed on businesses along with related costs of defending themselves in relation to alleged breaches of the Act. Conversely, it is important that fault-based liability (with higher penalties) remains available, under ss 18MH(4) and 18MI(3), for dealing with large scale or serious contraventions of the Act. The appropriate imposition of penalties will ensure businesses take their obligations under the Act seriously.

Subsections 18MH(6) and 18MI(5) provide that a person does not have to answer any questions or produce documents that might incriminate him or herself or expose them to a penalty. In practice, inspectors will be trained to inform persons of their rights and will be required to do so. These provisions are designed to ensure that a person's right not to incriminate him or herself is not unduly affected by proposed ss 18MH and 18MI.

It is not intended, in the usual case, to seek to go to court to enforce the strict liability sections, but rather only for cases involving fault. That is, the availability of strict liability offences for these types of breaches allows for enforcement of the Act without the need to proceed to court if it is not in the public's interest to do so, due to the unwarranted use of the resources of the courts, inspectors and businesses and the associated costs involved.

In short, the availability of a strict liability offence when investigating alleged breaches of the Act will deter people from obstructing the course of an investigation, and provide a flexible means for enforcing the Act without imposing inappropriately large costs on business.

Infringement notices will only be issued under ss 18MH(5) and 18MI(4) in accordance with relevant Commonwealth guidelines and will comply with any Commonwealth requirements regarding the content and format of such notices.

The Committee thanks the Minister for this response, which addresses the Committee's concerns, but notes that it would have been helpful if this information had been included in the explanatory memorandum.

Personal rights and liberties
Schedule 1, item 65

Proposed new subsections 18NB(5), 18NI(5), 18NL(5), 18PB(5), 18PI(5) and 18PM(5) of the *National Measurement Act 1960*, to be inserted by item 65 of Schedule 1, provide that if the Secretary to the Department fails to give the applicant for either a servicing licence or a public weighbridge licence written notice of his or her decision within the 28 days provided for in subsections 18NB(2) and 18PB(2) respectively, then the Secretary 'is taken to have refused to grant the application'.

The Committee considers that these provisions have the potential to be seen as providing encouragement for the Secretary to be dilatory in considering an application and **seeks the Minister's advice** on this matter, including the reasons for this provision and whether the Secretary should be required to fully consider an application within the specified 28-day period.

Pending the Minister'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.

Relevant extract from the response from the Minister

> This provision provides that if the Secretary has not made a decision with 28 days the application is taken to have been refused. Once a licence is refused, it provides the applicant with a clear path to appeal to the Administrative Appeals Tribunal (AAT).
>
> It is designed to encourage the Secretary to make decisions on licences within the consideration period and if a decision is not made, the application is deemed to have been refused and the applicant can then proceed with an appeal. Without this provision, the issuing of a licence could be delayed indefinitely and the applicant would have no right or reason to appeal.

The Committee thanks the Minister for this response.

National Rental Affordability Scheme Bill 2008

Introduction

The Committee dealt with this bill in *Alert Digest No. 11 of 2008*. The Minister for Housing responded to the Committee's comments in a letter dated 10 November 2008. A copy of the letter is attached to this report.

Extract from Alert Digest No. 11 of 2008

Introduced into the House of Representatives on 24 September 2008
Portfolio: Housing

Background

Introduced with the National Rental Affordability Scheme (Consequential Amendments) Bill 2008, this bill provides for the establishment of the National Rental Affordability Scheme by regulation. The National Rental Affordability Scheme aims to increase the supply of affordable rental dwellings, and reduce rental costs for low and moderate income households, by providing tax and cash incentives to providers of new dwellings on the condition that such dwellings are rented at 20 per cent below market rates.

Determination of important matters by regulation
Clauses 5-9

Clauses 5 to 9 are the only operative provisions of the bill, which allows the National Rental Affordability Scheme to be made by regulation. The Committee draws attention to provisions which may be considered to inappropriately delegate legislative powers of a kind that ought to be exercised by Parliament alone. In this instance, the Committee notes from the explanatory memorandum (page 5) that '(i)t was desirable to include most of the administrative details of the Scheme's operation in the regulations rather than in the bill itself to provide the flexibility required to address changing circumstances' (for example, changes in determining market rent, tenant eligibility criteria, and acceptable periods of vacancy).

While such regulations will be subject to review by the Senate Standing Committee on Regulations and Ordinances, the Committee considers that at least some of the details of the scheme might be included in the primary legislation. This would enable the scheme to be subject to detailed debate on the floor of each chamber of the Parliament, rather than subject to the much more heavy-handed disallowance process which is the only means by which any regulations made under the bill might be amended or rejected. Since the second reading speech indicates that the purpose of the bill is to provide $2.2 billion in incentives to private industry in order to increase the rental housing market, the Committee **seeks the Minister's advice** whether further details of the scheme might be included in the primary legislation rather than in regulations.

Pending the Minister'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.

Relevant extract from the response from the Minister

In particular, the Committee has noted that clauses 5 to 9 are the only operative provisions of the Bill, which allows the National Rental Affordability Scheme (the Scheme) to be made by regulation.

The Committee seeks my advice on whether further details of the Scheme might be included in the primary legislation rather than in regulations.

Providing for the Scheme's operation through regulations allows the Government to respond quickly and flexibly to changing circumstances.

An exposure draft of the National Rental Affordability Scheme Regulations 2008 was publicly released on 14 October 2008, to assist with understanding the scope and operation of the Scheme.

In terms of the balance of the details included in the Bill and those in the regulations, the Bill provides for the regulations to prescribe a Scheme that deals with the approval of participants, the approval of rental dwellings, and providing incentives to an approved participant if certain conditions are satisfied. Some of these conditions (the mandatory requirements) are set out in whole or in part in the Bill itself. These mandatory requirements cover the conditions relating to eligible rental dwellings eligible tenants and the maximum rent that can be charged, as well as the permitted vacancy rates.

However, it was desirable for the regulations to deal with administrative matters such as the process for determining market rent, tenant eligibility criteria and acceptable periods of vacancy, and the reporting requirements of the Scheme. The regulations will also address the approval of participants and rental dwellings, and how incentives will be provided to an approved participant who satisfies the conditions of the Scheme.

The flexibility provided by the regulations will allow the Scheme to best meet its two objectives: to reduce rental stress for low and moderate income earners and increase the supply of affordable housing. For example there may be cause to adapt the scheme to expand the household or dwelling types which may be eligible under the Scheme

The regulations also set out the allocation process for incentives under the Scheme. Under this process, the Secretary may make an allocation for a 10-year incentive period for a rental dwelling on certain conditions.

The Scheme is totally new in the Australian context. It is an innovative approach to reducing the number of Australians living in rental stress. For this reason the Government will review the Scheme in the early years of its implementation to ensure it is adequately focussed on those Australians in rental stress. We will also test whether or not there is scope for simplifying the Scheme or reducing the administrative burden on providers, and whether there are evolving issues of non compliance that need to be addressed. We may need to make improvements to the Scheme before it is expanded. These are further reasons for retaining many of the details of the Scheme in the regulations.

Also, I offer a point of clarification for the Committee in respect of the funding to be provided under the Scheme. Please note that the figure of $2.2 billion quoted in the Alert Digest relates to the Government's entire affordable housing package, which will increase the supply of affordable rental homes, help people save for their first home, lower housing infrastructure costs, and build new homes for homeless Australians. The National Rental Affordability Scheme is a key part of this package, under which 50,000 incentives will be made available at a cost of $623 million over the forward estimates for 50,000 new rental properties to be constructed across Australia in the first four years. If market demand remains strong, another 50,000 incentives may be made available over five years from July 2012.

For all the reasons discussed above, I remain of the view that the balance between the details contained in the Bill and those in the regulations is appropriate. In my view this arrangement gives the Australian Government vital flexibility to address changing circumstances and will ensure the Scheme continues to meet its objectives in the most efficient way.

The Committee thanks the Minister for this comprehensive response, which addresses the Committee's concerns.

Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008

Introduction

The Committee dealt with this bill in the amendments section of *Alert Digest No. 10 of 2008*. The Minister for Resources and Energy responded to the Committee's comments in a letter dated 22 October 2008. A copy of the letter is attached to this report.

Extract from the Amendments section of Alert Digest No. 10 of 2008

On 18 September 2008, the House of Representatives agreed to ninety-three amendments to this bill, a number of which fall within the Committees terms of reference.

Determination of important matters by regulation
Amendment No. 18 - proposed section 15F

Amendment No. 18 replaces proposed section 15F of this bill, which was to be inserted by item 109 of Schedule 1, with a revised version. The amended proposed section 15F provides that criteria for determining whether there is a 'significant risk' of one person's operations having a 'significant adverse impact' on another person's operations, under specified sections of the bill, are to be included in regulations.

The Committee draws attention to provisions which may be considered to inappropriately delegate legislative powers of a kind that ought to be exercised by Parliament alone. In this instance, the Committee notes that the criteria to determine whether there is a 'significant risk' of one person's operations having a 'significant adverse impact' on another person's operations is fundamental to the operation of various provisions of this bill.

The Committee notes from the supplementary explanatory memorandum that 'the regulation-making power is expressed in broad terms, to enable the provision of different kinds of means, or combinations of means, of arriving at an answer.' Nevertheless, the Committee considers that this provision may inappropriately delegate legislative powers and **seeks the Minister's advice** whether these criteria might be included in the primary legislation rather than in regulations.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Relevant extract from the response from the Minister

In *Alert Digest 10 of 2008*, the Senate Standing Committee for the Scrutiny of Bills concluded that provisions in the amended Bill relating to the Minister's regulation making power in respect of the significant risk of a significant adverse impact:

> '...may inappropriately delegate legislative powers and seeks the Minister's advice whether these criteria might be included in the primary legislation rather than in the regulations.'

To address this concern the Government has proposed an amendment to the Bill, to be tabled in the Senate, which includes defining what constitutes a significant impact and providing for the regulations on impact to be assessed against a threshold. The amendment to the Bill also proposes that regulations must take into account:

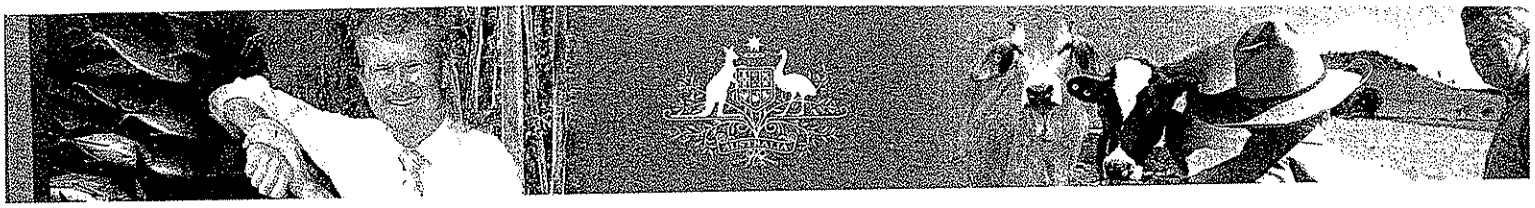
- the probability of the occurrence of an adverse impact;
- the extent of the adverse impact; and
- the extent of the impact relative to the extent of petroleum operations in the petroleum title area impacted.

I have attached a copy of the Bill Amendment **(Attachment A)** and associated explanatory memorandum **(Attachment B).**

Thank you once again for bringing this matter to our attention. Addressing this will improve the robustness and transparency of this Bill and I hope this amendment, to be tabled in the Senate, adequately addresses your concern.

The Committee thanks the Minister for this response, and is pleased to note the amendments to the bill which address the Committee's concerns.

Senator the Hon Helen Coonan
Chair



The Hon. Tony Burke MP

Minister for Agriculture, Fisheries and Forestry

6 NOV 2008

Senator the Hon. Helen Coonan
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Helen

Dear Senator Coonan

Ms Julie Dennett, Secretary of the Senate Standing Committee for the Scrutiny of Bills, wrote to my senior adviser on 15 October 2008 to draw my attention to comments made about the Dairy Adjustment Levy Termination Bill 2008 (the Bill) in Alert Digest No. 11 of 2008. Ms Dennett asked me to respond directly to you.

The Bill proposes amendments to the *Dairy Produce Act 1986* that will have the effect of closing the Dairy Industry Adjustment Program. It amends the Act to enable the minister to more accurately determine a date to terminate the Dairy Adjustment Levy, and to close the Dairy Adjustment Authority and the Dairy Structural Adjustment Fund.

The complexity of removing the levy and closing the authority requires the Australian Government to retain some flexibility in determining specific dates for both actions. This was taken into consideration in drafting the Bill and resulted in the mechanism proposed. The Office of Parliamentary Counsel, in consultation with drafting instructors in the Department of Agriculture, Fisheries and Forestry (the department) and with the Attorney-General's Department, has determined that the ministerial action meets the definition of a 'legislative instrument' under section 5 of the *Legislative Instruments Act 2003*.

The Bill provides the minister with additional guidance in terminating the levy to that already in the Act. The Bill also provides legislative guidance for the closure of the authority while still allowing any outstanding functions to be performed. I do not see a need to include any further limits on the exercise of the minister's powers than already proposed in the Bill and both of these actions will enjoy the scrutiny of the parliament.

Levy termination date

The Act already provides the minister with the power to declare the levy termination day by notice published in the *Government Notices Gazette*. The Bill makes a simple amendment to an existing power to ensure excess collections are minimised. The alternative, under existing arrangements, would be likely to result in the collection of around $50 million more than is needed for the adjustment program.

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To achieve this, the Bill enables the minister, in setting the levy termination day, to take account of levy that has been paid by consumers but not yet receipted into the adjustment fund and to reduce the notice period for levy collection from 28 to seven days. The minister would not have unfettered discretion in declaring the levy termination date, as the Bill provides that that the minister would need to be satisfied that sufficient revenue has been collected to cover remaining costs associated with the adjustment fund.

The mechanism to remove the levy proposed by the Bill better balances the desire to ensure that consumers do not continue to pay the levy on drinking milk after all costs associated with the adjustment program have been met against the need to ensure sufficient revenue is collected.

Cessation of the Dairy Adjustment Authority

The Bill also provides for the minister, in finalising the adjustment program, to close the Dairy Adjustment Authority (the authority). The authority was established for the purpose of making eligibility determinations for payments to farmers under the two largest components of the adjustment program. With the exception of finalising its 2007/08 reporting requirements and a small number of other minor outstanding issues, it has completed its job.

The legislation currently makes no provision for closing the authority. The Bill proposes measures to avoid a redundant statutory authority continuing for an indefinite period, with all of the associated reporting requirements.

The Bill does not specify an exact closing date for the authority. This will enable authority staff to progress the small number of remaining unclaimed monies cases, complete the authority's 2007–08 reporting obligations and transfer authority records to the department.

Once these matters are finalised, or substantially progressed, the Bill provides for the minister to declare the authority closed at which time the authority's functions, including reporting requirements, will be transferred to the Secretary of the department. This reflects the current situation where the secretary is the sole member of the authority.

Thank you for raising these matters with me. I trust this information is of assistance to the committee.

Yours sincerely

Tony Burke

Tony Burke

SENATOR THE HON KIM CARR

MINISTER FOR INNOVATION, INDUSTRY, SCIENCE AND RESEARCH

30 OCT 2008

Senator the Hon Helen Coonan
Senator for New South Wales
Chair, Standing Committee for the
Scrutiny of Bills
PO Box 6022
Parliament House
CANBERRA ACT 2600

Dear Senator Coonan

I refer to comments contained in the Scrutiny of Bills *Alert Digest No 11 of 2008* (15 October 2008) concerning legislation for which I have portfolio responsibility, the National Measurement Amendment Bill 2008.

I note the comments of the Committee, and attach a response to the two issues raised. I trust that these explanations will meet the Committee's concerns.

This letter has been copied to my colleague, the Hon Dr Craig Emerson MP, Minister for Small Business, Independent Contracts and the Service Economy and Minister Assisting the Finance Minister on Deregulation, who has day to day responsibility for the National Measurement Institute within the portfolio.

Yours sincerely

Kim Carr

Telephone (02) 6277 7580 PO Box 6022, Parliament House, Canberra ACT 2600 Facsimile (02) 6273 4104

Standing Committee for the Scrutiny of Bills (the Committee)

Scrutiny of Bills Alert Digest No 11 of 2008 (15 October 2008) concerning National Measurement Amendment Bill 2008.

The Standing Committee for the Scrutiny of Bills has raised two issues requiring response by the Minister.

1. **Strict Liability**
   Schedule 1, Item 65, proposed new subsections 18 MH(5) and 18MI(4), p18 of the Alert

   In addition to the general comments provided at pages 10 and 11 of the Explanatory Memorandum to the *National Measurement Amendment Bill 2008*, the following particular considerations make it appropriate to impose strict liability under ss 18MH(5) and 18MI(4).

   The imposition of strict liability is likely to significantly enhance the effectiveness of enforcement of ss 18MH and 18MI. Trade measurement inspectors cover a large range of industry types from small corner stores to large multi-national corporations. Subsections 18MH(5) and 18MI(4) provide flexibility when dealing with low key issues with smaller businesses where it is not in the public interest to seek court action for a minor offence of not answering questions or producing documents where the detriment caused by the offence is relatively small (for example where a corner store sells a small number of underweight products and the trader refuses to answer questions or produce documents, and so hinders the inspector in the course of the investigation).

   The imposition of strict liability (with the possibility of issuing infringement notices rather than pursuing prosecution) allows for such relatively low level breaches to be dealt with in a way that directly encourages compliance with the Act, without the need for onerous penalties to be imposed on businesses along with related costs of defending themselves in relation to alleged breaches of the Act. Conversely, it is important that fault-based liability (with higher penalties) remains available, under ss 18MH(4) and 18MI(3), for dealing with large scale or serious contraventions of the Act. The appropriate imposition of penalties will ensure businesses take their obligations under the Act seriously.

   Subsections 18MH(6) and 18MI(5) provide that a person does not have to answer any questions or produce documents that might incriminate him or herself or expose them to a penalty. In practice, inspectors will be trained to inform persons of their rights and will be required to do so. These provisions are designed to ensure that a person's right not to incriminate him or herself is not unduly affected by proposed ss 18MH and 18MI.

   It is not intended, in the usual case, to seek to go to court to enforce the strict liability sections, but rather only for cases involving fault. That is, the availability of strict liability offences for these types of breaches allows for enforcement of the Act without the need to proceed to court if it is not in the public's interest to do so,

due to the unwarranted use of the resources of the courts, inspectors and businesses and the associated costs involved.

In short, the availability of a strict liability offence when investigating alleged breaches of the Act will deter people from obstructing the course of an investigation, and provide a flexible means for enforcing the Act without imposing inappropriately large costs on business.

Infringement notices will only be issued under ss 18MH(5) and 18MI(4) in accordance with relevant Commonwealth guidelines and will comply with any Commonwealth requirements regarding the content and format of such notices.

2. Personal rights and liabilities p20 of the Alert
Schedule 1, Item 65

This provision provides that if the Secretary has not made a decision with 28 days the application is taken to have been refused. Once a licence is refused, it provides the applicant with a clear path to appeal to the Administrative Appeals Tribunal (AAT).

It is designed to encourage the Secretary to make decisions on licences within the consideration period and if a decision is not made, the application is deemed to have been refused and the applicant can then proceed with an appeal. Without this provision, the issuing of a licence could be delayed indefinitely and the applicant would have no right or reason to appeal.

The Hon Tanya Plibersek MP
Minister for Housing
Minister for the Status of Women

MN08-004506

Senator the Hon Helen Coonan
Chair
Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator Coonan

Thank you for the opportunity to respond to the Scrutiny of the Bills Alert Digest No. 11 of 2008 (15 October) regarding the National Rental Affordability Scheme Bill 2008 (the Bill).

In particular, the Committee has noted that clauses 5 to 9 are the only operative provisions of the Bill, which allows the National Rental Affordability Scheme (the Scheme) to be made by regulation.

The Committee seeks my advice on whether further details of the Scheme might be included in the primary legislation rather than in regulations.

Providing for the Scheme's operation through regulations allows the Government to respond quickly and flexibly to changing circumstances.

An exposure draft of the National Rental Affordability Scheme Regulations 2008 was publicly released on 14 October 2008, to assist with understanding the scope and operation of the Scheme.

In terms of the balance of the details included in the Bill and those in the regulations, the Bill provides for the regulations to prescribe a Scheme that deals with the approval of participants, the approval of rental dwellings, and providing incentives to an approved participant if certain conditions are satisfied. Some of these conditions (the mandatory requirements) are set out in whole or in part in the Bill itself. These mandatory requirements cover the conditions relating to eligible rental dwellings, eligible tenants and the maximum rent that can be charged, as well as the permitted vacancy rates.

However, it was desirable for the regulations to deal with administrative matters such as the process for determining market rent, tenant eligibility criteria and acceptable periods of vacancy, and the reporting requirements of the Scheme. The regulations will also address the approval of participants and rental dwellings, and how incentives will be provided to an approved participant who satisfies the conditions of the Scheme.

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The flexibility provided by the regulations will allow the Scheme to best meet its two objectives: to reduce rental stress for low and moderate income earners and increase the supply of affordable housing. For example there may be cause to adapt the scheme to expand the household or dwelling types which may be eligible under the Scheme

The regulations also set out the allocation process for incentives under the Scheme. Under this process, the Secretary may make an allocation for a 10-year incentive period for a rental dwelling on certain conditions.

The Scheme is totally new in the Australian context. It is an innovative approach to reducing the number of Australians living in rental stress. For this reason the Government will review the Scheme in the early years of its implementation to ensure it is adequately focussed on those Australians in rental stress. We will also test whether or not there is scope for simplifying the Scheme or reducing the administrative burden on providers, and whether there are evolving issues of non compliance that need to be addressed. We may need to make improvements to the Scheme before it is expanded. These are further reasons for retaining many of the details of the Scheme in the regulations.

Also, I offer a point of clarification for the Committee in respect of the funding to be provided under the Scheme. Please note that the figure of $2.2 billion quoted in the Alert Digest relates to the Government's entire affordable housing package, which will increase the supply of affordable rental homes, help people save for their first home, lower housing infrastructure costs, and build new homes for homeless Australians. The National Rental Affordability Scheme is a key part of this package, under which 50,000 incentives will be made available at a cost of $623 million over the forward estimates for 50,000 new rental properties to be constructed across Australia in the first four years. If market demand remains strong, another 50,000 incentives may be made available over five years from July 2012.

For all the reasons discussed above, I remain of the view that the balance between the details contained in the Bill and those in the regulations is appropriate. In my view this arrangement gives the Australian Government vital flexibility to address changing circumstances and will ensure the Scheme continues to meet its objectives in the most efficient way.

Yours sincerely

Tanya Plibersek

Tanya Plibersek

10.11.08

THE HON MARTIN FERGUSON AM MP

MINISTER FOR RESOURCES AND ENERGY
MINISTER FOR TOURISM

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PARLIAMENT HOUSE
CANBERRA ACT 2600

22 OCT 2008

Senator the Helen Coonan
Chair of the Committee
Senate Standing Committee for the Scrutiny of Bills
Parliament House
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CANBERRA ACT 2600

Dear Senator Coonan

Thank you for your letter of 25 September 2008 concerning the amendments to the Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 (the Bill) passed in the House of Representatives.

In *Alert Digest 10 of 2008*, the Senate Standing Committee for the Scrutiny of Bills concluded that provisions in the amended Bill relating to the Minister's regulation making power in respect of the significant risk of a significant adverse impact:

> '...may inappropriately delegate legislative powers and seeks the Minister's advice whether these criteria might be included in the primary legislation rather than in the regulations.'

To address this concern the Government has proposed an amendment to the Bill, to be tabled in the Senate, which includes defining what constitutes a significant impact and providing for the regulations on impact to be assessed against a threshold. The amendment to the Bill also proposes that regulations must take into account:

- the probability of the occurrence of an adverse impact;
- the extent of the adverse impact; and
- the extent of the impact relative to the extent of petroleum operations in the petroleum title area impacted.

I have attached a copy of the Bill Amendment **(Attachment A)** and associated explanatory memorandum **(Attachment B)**.

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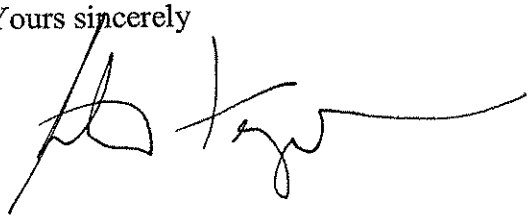
Thank you once again for bringing this matter to our attention. Addressing this will improve the robustness and transparency of this Bill and I hope this amendment, to be tabled in the Senate, adequately addresses your concern.

Yours sincerely



Martin Ferguson

Enc

2008

The Parliament of the
Commonwealth of Australia

THE SENATE

Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008

(Government)

(1) Schedule 1, item 81, page 22 (line 21), at the end of the definition of ***significant risk***, add ", 15FA, 15FB, 15FC or 15FD".

[significant risk of significant adverse impact]

(2) Schedule 1, item 109, page 36 (line 23) to page 38 (line 7), omit section 15F, substitute:

15F Significant risk of a significant adverse impact—approval of key petroleum operations

(1) For the purposes of sections 79A, 79B, 114A, 114B, 138A and 138B and paragraph 435B(2)(a), the question of whether there is a significant risk that a key petroleum operation will have a significant adverse impact on:

(a) operations for the injection of a greenhouse gas substance; or

(b) operations for the storage of a greenhouse gas substance;

is to be determined in a manner ascertained in accordance with the regulations.

(2) A manner ascertained in accordance with regulations made for the purposes of subsection (1) must take into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) the economic consequences of the adverse impact relative to the potential economic value of the operations referred to in whichever of paragraph (1)(a) or (b) is applicable.

(3) Subsection (2) does not limit the matters that may be taken into account.

(4) Subsections (1) and (2) have effect subject to subsections (5) and (6).

(5) For the purposes of sections 79A, 79B, 114A, 114B, 138A and 138B and paragraph 435B(2)(a), a key petroleum operation will have an adverse impact on:

(a) operations for the injection of a greenhouse gas substance; or

(b) operations for the storage of a greenhouse gas substance;

(the ***relevant greenhouse gas operations***) if, and only if, the key petroleum operation will result in:

(c) an increase in the capital costs (other than prescribed costs) of the relevant greenhouse gas operations; or

(d) an increase in the operating costs (other than prescribed costs) of the relevant greenhouse gas operations; or

(e) a reduction in the rate of injection of the greenhouse gas substance; or

(f) a reduction in the quantity of the greenhouse gas substance that will be able to be stored.

(6) For the purposes of sections 79A, 79B, 114A, 114B, 138A and 138B and paragraph 435B(2)(a), if there is a risk that a key petroleum operation will have an adverse impact on:

(a) operations for the injection of a greenhouse gas substance; or

(b) operations for the storage of a greenhouse gas substance;

then that risk is not to be treated as significant, and that adverse impact is not to be treated as significant, if the amount that, under the regulations, is taken to be the probability-weighted impact cost of the key petroleum operation is less than the amount that, under the regulations, is taken to be the threshold amount.

15FA Significant risk of a significant adverse impact—grant of production licence

(1) For the purposes of sections 145 and 146, the question of whether there is a significant risk that any of the operations that could be carried on under a production licence will have a significant adverse impact on operations that are being, or could be, carried on under:

(a) a greenhouse gas assessment permit; or

(b) a greenhouse gas holding lease; or

(c) a greenhouse gas injection licence;

is to be determined in a manner ascertained in accordance with the regulations.

(2) A manner ascertained in accordance with regulations made for the purposes of subsection (1) must take into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) the economic consequences of the adverse impact relative to the potential economic value of the operations that are being, or could be, carried on under the permit, lease or licence referred to in whichever of paragraph (1)(a), (b) or (c) is applicable.

(3) Subsection (2) does not limit the matters that may be taken into account.

(4) Subsections (1) and (2) have effect subject to subsections (5) and (6).

(5) For the purposes of sections 145 and 146, an operation that could be carried on under a production licence (the ***production licence operation***) will have an adverse impact on operations (the ***relevant greenhouse gas operations***) that are being, or could be, carried on under:

(a) a greenhouse gas assessment permit; or

(b) a greenhouse gas holding lease; or

(c) a greenhouse gas injection licence;

if, and only if, the production licence operation will result in:

(d) an increase in the capital costs (other than prescribed costs) of the relevant greenhouse gas operations; or

(e) an increase in the operating costs (other than prescribed costs) of the relevant greenhouse gas operations; or

(f) a reduction in the rate of injection of the greenhouse gas substance; or

(g) a reduction in the quantity of the greenhouse gas substance that will be able to be stored.

(6) For the purposes of sections 145 and 146, if there is a risk that an operation that could be carried on under a production licence (the ***production licence operation***) will have an adverse impact on operations that are being, or could be, carried on under:

(a) a greenhouse gas assessment permit; or

(b) a greenhouse gas holding lease; or

(c) a greenhouse gas injection licence;

then that risk is not to be treated as significant, and that adverse impact is not to be treated as significant, if the amount that, under the regulations, is taken to be the probability-weighted impact cost of the production licence operation is less than the amount that, under the regulations, is taken to be the threshold amount.

15FB Significant risk of a significant adverse impact—approval of key greenhouse gas operations

(1) For the purposes of sections 249AF and 249BD and paragraph 435B(2)(b), the question of whether there is a significant risk that a key greenhouse gas operation will have a significant adverse impact on petroleum exploration operations, or petroleum recovery operations, that are being, or could be, carried on under:

(a) an existing exploration permit; or

(b) an existing retention lease; or

(c) an existing production licence; or

(d) a future exploration permit; or

(e) a future retention lease; or

(f) a future production licence;

is to be determined in a manner ascertained in accordance with the regulations.

(2) A manner ascertained in accordance with regulations made for the purposes of subsection (1) must take into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) the economic consequences of the adverse impact relative to the potential economic value of the petroleum exploration operations, or petroleum recovery operations, that are being, or could be, carried on under the permit, lease or licence referred to in whichever of paragraph (1)(a), (b), (c), (d), (e) or (f) is applicable.

(3) Subsection (2) does not limit the matters that may be taken into account.

(4) Subsections (1) and (2) have effect subject to subsections (5) and (6).

(5) For the purposes of sections 249AF and 249BD and paragraph 435B(2)(b), a key greenhouse gas operation will have an adverse impact on petroleum exploration operations, or petroleum recovery operations, that are being, or could be, carried on under:

(a) an existing exploration permit; or

(b) an existing retention lease; or

(c) an existing production licence; or

(d) a future exploration permit; or

(e) a future retention lease; or

(f) a future production licence;

if, and only if, the key greenhouse gas operation will result in:

(g) an increase in the capital costs (other than prescribed costs) of the petroleum exploration operations or petroleum recovery operations; or

(h) an increase in the operating costs (other than prescribed costs) of the petroleum exploration operations or petroleum recovery operations; or

(i) a reduction in the rate of recovery of the petroleum; or

(j) a reduction in the quantity of the petroleum that will be able to be recovered.

(6) For the purposes of sections 249AF and 249BD and paragraph 435B(2)(b), if there is a risk that a key greenhouse gas operation will have an adverse impact on petroleum exploration operations, or petroleum recovery operations, that are being, or could be, carried on under:

(a) an existing exploration permit; or

(b) an existing retention lease; or

(c) an existing production licence; or

(d) a future exploration permit; or

(e) a future retention lease; or

(f) a future production licence;

then that risk is not to be treated as significant, and that adverse impact is not to be treated as significant, if the amount that, under the regulations, is taken to be the probability-weighted impact cost of the key greenhouse gas operation is less than the amount that, under the regulations, is taken to be the threshold amount.

15FC Significant risk of a significant adverse impact—grant of greenhouse gas injection licence

(1) For the purposes of sections 249CI and 249CR and paragraph 435B(2)(c), the question of whether there is a significant risk that any of the operations that could be carried on under a greenhouse gas injection licence will have a significant adverse impact on operations that are being, or could be, carried on under:

(a) an existing exploration permit; or

(b) an existing retention lease; or

(c) an existing production licence; or

(d) a future exploration permit; or

(e) a future retention lease; or

(f) a future production licence;

is to be determined in a manner ascertained in accordance with the regulations.

(2) A manner ascertained in accordance with regulations made for the purposes of subsection (1) must take into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) the economic consequences of the adverse impact relative to the potential economic value of the operations that are being, or could be, carried on under the permit, lease or licence referred to in whichever of paragraph (1)(a), (b), (c), (d), (e) or (f) is applicable.

(3) Subsection (2) does not limit the matters that may be taken into account.

(4) Subsections (1) and (2) have effect subject to subsections (5) and (6).

(5) For the purposes of sections 249CI and 249CR and paragraph 435B(2)(c), an operation that could be carried on under a greenhouse gas injection licence (the ***injection licence operation***) will have an adverse impact on operations (the ***relevant petroleum operations***) that are being, or could be, carried on under:

(a) an existing exploration permit; or

(b) an existing retention lease; or

(c) an existing production licence; or

(d) a future exploration permit; or

(e) a future retention lease; or

(f) a future production licence;

if, and only if, the injection licence operation will result in:

(g) an increase in the capital costs (other than prescribed costs) of the relevant petroleum operations; or

(h) an increase in the operating costs (other than prescribed costs) of the relevant petroleum operations; or

(i) a reduction in the rate of recovery of the petroleum; or

(j) a reduction in the quantity of the petroleum that will be able to be recovered.

(6) For the purposes of sections 249CI and 249CR and paragraph 435B(2)(c), if there is a risk that an operation that could be carried on under a greenhouse gas injection licence (the ***injection licence operation***) will have an adverse impact on operations that are being, or could be, carried on under:

(a) an existing exploration permit; or

(b) an existing retention lease; or

(c) an existing production licence; or

(d) a future exploration permit; or

(e) a future retention lease; or

(f) a future production licence;

then that risk is not to be treated as significant, and that adverse impact is not to be treated as significant, if the amount that, under the regulations, is taken to be the probability-weighted impact cost of the injection licence operation is less than the amount that, under the regulations, is taken to be the threshold amount.

15FD Significant risk of a significant adverse impact—power of responsible Commonwealth Minister to protect petroleum

(1) For the purposes of section 249CZC and paragraph 435B(2)(d), the question of whether there is a significant risk that any of the operations that are being, or could be, carried on under a greenhouse gas injection licence will have a significant adverse impact on:

(a) operations to recover petroleum; or

(b) the commercial viability of the recovery of petroleum;

is to be determined in a manner ascertained in accordance with the regulations.

(2) A manner ascertained in accordance with regulations made for the purposes of subsection (1) must take into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) the economic consequences of the adverse impact relative to the potential economic value of the operations or recovery referred to in whichever of paragraph (1)(a) or (b) is applicable.

(3) Subsection (2) does not limit the matters that may be taken into account.

(4) Subsections (1) and (2) have effect subject to subsections (5) and (6).

(5) For the purposes of section 249CZC and paragraph 435B(2)(d), an operation that could be carried on under a greenhouse gas injection licence (the ***injection licence operation***) will have an adverse impact on:

(a) operations to recover petroleum; or

(b) the commercial viability of the recovery of petroleum;

if, and only if, the injection licence operation will result in:

(c) an increase in the capital costs (other than prescribed costs) of the recovery of the petroleum; or

(d) an increase in the operating costs (other than prescribed costs) of the recovery of the petroleum; or

(e) a reduction in the rate of recovery of the petroleum; or

(f) a reduction in the quantity of the petroleum that will be able to be recovered.

(6) For the purposes of section 249CZC and paragraph 435B(2)(d), if there is a risk that an operation that is being, or could be, carried on under a greenhouse gas injection licence (the ***injection licence operation***) will have an adverse impact on:

(a) operations to recover petroleum; or

(b) the commercial viability of the recovery of petroleum;

then that risk is not to be treated as significant, and that adverse impact is not to be treated as significant, if the amount that, under the regulations, is taken to be the probability-weighted impact cost of the injection licence operation is less than the amount that, under the regulations, is taken to be the threshold amount.

[significant risk of significant adverse impact]

ATTACHMENT B

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

OFFSHORE PETROLEUM AMENDMENT (GREENHOUSE GAS STORAGE) BILL 2008

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be moved on Behalf of the Government

(Circulated by authority of the Minister for Resources and Energy, the Honourable Martin Ferguson AM, MP)

Financial Impact Statement

Funding for the development and implementation of the regulatory framework has been provided and no additional funding is sought for this purpose. Fees will be charged for greenhouse gas titles to cover the costs of day-to day-administration.

Amendments to the Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008

Outline

1. This amendment to the Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 ('the Bill') was developed to address the matters raised by the Senate Scrutiny of Bills Committee.

2. In their review of the amendments to the Bill made in the House of Representatives, the Senate Scrutiny of Bills Committee concluded that provisions in the revised Bill relating to the Minister's regulation making power in respect of the significant risk of a significant adverse impact:

> 'may inappropriately delegate legislative powers and seeks the Minister's advice whether these criteria might be included in the primary legislation rather than in the regulations'.

3. The proposed amendments relate to each of the situations in which the responsible Commonwealth Minister is required to determine whether or not there is a significant risk of a significant adverse impact.

4. Specific regulation making powers have been included to provide for the manner of determining whether a significant risk of a significant adverse impact exists.

5. In determining if a significant risk of a significant adverse impact exists, the amendments require regulations to take into account the probability of the occurrence of the adverse impact, the economic consequences of the adverse impact and the relative value of the consequences to the potential economic value of the operations undertaken on the title.

6. The proposed amendments define the impacts that will be regarded as an 'adverse impact' on petroleum title activities. These are an increase in the capital costs, an increase in the operating costs, a reduction in the petroleum recovery rates and a reduction in the quantity of petroleum recovered.

7. The proposed amendments also define the impacts that will be regarded as an 'adverse impact' for greenhouse gas title activities. These are an increase in the capital costs, an increase in the operating costs, a reduction in the greenhouse gas injection rates or a reduction in the quantity of greenhouse gas that may be injected.

8. Provisions to enable the regulations to set threshold criteria that may be regarded in determining if a significant risk of a significant impact exists are included in the proposed amendments

(1) Schedule 1, item 81, page 22 (line 21), at the end of the definition of significant risk

9. Amendment 1 amends item 81 of the Bill by adding new sections 15FA, 15FB, 15FC and 15FD to the list of provisions that affect the meaning of the term ***significant risk***.

(2) Schedule 1, item 109, page 36 (line 23) to page 38 (line 7)

10. Amendment 2 amends item 109 of the Bill by deleting section 15F and substituting the following 4 new sections.

Proposed section 15F Significant risk of a significant adverse impact—approval of key petroleum operations

11. Proposed section 15F(1) provides for the making of regulations that provide for the manner of determining whether in any particular case there is a significant risk that a key petroleum operation will have a significant adverse impact on injection or storage operations under a greenhouse gas title.

12. Subsection (2) provides that the regulations must require that the following matters be taken into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) those economic consequences relative to the potential economic value of the entire injection and storage operations under the relevant greenhouse gas title.

The regulations may provide for other matters to be taken into account.

13. Subsection (5) defines the impacts of one title-holder's operations on another's that will be regarded as an 'adverse impact'. They are:

- an increase in the capital costs of the operations (other than costs prescribed in the regulations);
- an increase in the operating costs (other than costs prescribed in the regulations);
- a reduction in the rate of injection of greenhouse gas; or
- a reduction in the quantity of greenhouse gas that can be stored.

14. The provision for particular kinds of capital or operating costs to be excluded by the regulations will enable the exclusion of costs that are going to be ordinary costs of operating in an environment where petroleum and greenhouse gas titles may overlap or be in proximity to one another.

15. Subsection (6) enables the regulations to set a minimum threshold probability-weighted impact cost that may be regarded by the responsible Commonwealth Minister as a significant risk of a significant adverse impact when making decisions under the relevant sections of the Act.

Proposed section 15FA Significant risk of a significant adverse impact—grant of production licence

16. Proposed subsection 15FA(1) provides for the making of regulations that provide for the manner of determining whether in any particular case there is a significant risk that operations under a petroleum production licence will have a significant adverse impact on operations under a greenhouse gas title.

17. Subsection (2) provides that the regulations must require that the following matters be taken into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) those economic consequences relative to the potential economic value of the entire operations under the relevant greenhouse gas title.

The regulations may provide for other matters to be taken into account.

18. Subsection (5) defines the impacts of one title-holder's operations on another's that will be regarded as an 'adverse impact'. They are:

- an increase in the capital costs of the operations (other than costs prescribed in the regulations);
- an increase in the operating costs (other than costs prescribed in the regulations);
- a reduction in the rate of injection of greenhouse gas; or
- a reduction in the quantity of greenhouse gas that can be stored.

19. The provision for particular kinds of capital or operating costs to be excluded by the regulations will enable the exclusion of costs that are going to be ordinary costs of operating in an environment where petroleum and greenhouse gas titles may overlap or be in proximity to one another.

20. Subsection (6) enables the regulations to set a minimum threshold probability-weighted impact cost that may be regarded by the responsible Commonwealth Minister as a significant risk of a significant adverse impact when making decisions under the relevant sections of the Act.

Proposed section 15FB Significant risk of a significant adverse impact—approval of key greenhouse gas operations

21. Proposed subsection 15FB(1) provides for the making of regulations that provide for the manner of determining whether in any particular case there is a significant risk

that key greenhouse gas operations will have a significant adverse impact on petroleum exploration or recovery operations under a petroleum title.

22. Subsection (2) provides that the regulations must require that the following matters be taken into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) those economic consequences relative to the potential economic value of the entire petroleum operations under the relevant petroleum title.

The regulations may provide for other matters to be taken into account.

23. Subsection (5) defines the impacts of one title-holder's operations on another's that will be regarded as an 'adverse impact'. They are:

- an increase in the capital costs of the operations (other than costs prescribed in the regulations);
- an increase in the operating costs (other than costs prescribed in the regulations);
- a reduction in the rate of recovery of petroleum; or
- a reduction in the quantity of petroleum that can be recovered.

24. The provision for particular kinds of capital or operating costs to be excluded by the regulations will enable the exclusion of costs that are going to be ordinary costs of operating in an environment where petroleum and greenhouse gas titles may overlap or be in proximity to one another.

25. Subsection (6) enables the regulations to set a minimum threshold probability-weighted impact cost that may be regarded by the responsible Commonwealth Minister as a significant risk of a significant adverse impact when making decisions under the relevant sections of the Act.

Proposed section 15FC Significant risk of a significant adverse impact—grant of greenhouse gas injection licence

26. Proposed subsection 15FC(1) provides for the making of regulations that provide for the manner of determining whether in any particular case there is a significant risk that operations under a greenhouse gas injection licence will have a significant adverse impact on petroleum operations under a petroleum title.

27. Subsection (2) provides that the regulations must require that the following matters be taken into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) those economic consequences relative to the potential economic value of the entire petroleum operations under the relevant petroleum title.

The regulations may provide for other matters to be taken into account.

28. Subsection (5) defines the impacts of one title-holder's operations on another's that will be regarded as an 'adverse impact'. They are:

- an increase in the capital costs of the operations (other than costs prescribed in the regulations);
- an increase in the operating costs (other than costs prescribed in the regulations);
- a reduction in the rate of recovery of petroleum; or
- a reduction in the quantity of petroleum that can be recovered.

29. The provision for particular kinds of capital or operating costs to be excluded by the regulations will enable the exclusion of costs that are going to be ordinary costs of operating in an environment where petroleum and greenhouse gas titles may overlap or be in proximity to one another.

30. Subsection (6) enables the regulations to set a minimum threshold probability-weighted impact cost that may be regarded by the responsible Commonwealth Minister as a significant risk of a significant adverse impact when making decisions under the relevant sections of the Act.

Proposed section 15FD Significant risk of a significant adverse impact—power of responsible Commonwealth Minister to protect petroleum

31. Proposed subsection 15FD(1) provides for the making of regulations that provide for the manner of determining whether in any particular case there is a significant risk that operations under a greenhouse gas injection licence will have a significant adverse impact on a commercial or potentially commercial discovery of petroleum in a pre-commencement petroleum title area.

32. Subsection (2) provides that the regulations must require that the following matters be taken into account:

(a) the probability, or range of probabilities, of the occurrence of the adverse impact; and

(b) the economic consequences of the adverse impact; and

(c) those economic consequences relative to the potential economic value of the entire discovery of petroleum in the pre-commencement petroleum title area.

The regulations may provide for other matters to be taken into account.

33. Subsection (5) defines the impacts of one title-holder's operations on another's that will be regarded as an 'adverse impact'. They are:

- an increase in the capital costs of the operations (other than costs prescribed in the regulations);
- an increase in the operating costs (other than costs prescribed in the regulations);
- a reduction in the rate of recovery of petroleum; or
- a reduction in the quantity of petroleum that can be recovered.

34. The provision for particular kinds of capital or operating costs to be excluded by the regulations will enable the exclusion of costs that are going to be ordinary costs of operating in an environment where petroleum and greenhouse gas titles may overlap or be in proximity to one another.

35. Subsection (6) enables the regulations to set a minimum threshold probability-weighted impact cost that may be regarded by the responsible Commonwealth Minister as a significant risk of a significant adverse impact when making decisions under the relevant sections of the Act.