



**SENATE STANDING COMMITTEE**

**FOR THE**

**SCRUTINY OF BILLS**

**EIGHTH REPORT**

**OF**

**2008**

**3 September 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.



# **SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS**

## **EIGHTH REPORT OF 2008**

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

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

Excise Tariff Amendment (Condensate) Bill 2008

## **Excise Tariff Amendment (Condensate) Bill 2008**

### ***Introduction***

The Committee dealt with this bill in the amendments section of *Alert Digest No. 5 of 2008*. The Treasurer responded to the Committee's comments in a letter dated 27 August 2008. A copy of the letter is attached to this report.

### ***Extract from Amendments Section of Alert Digest No. 5 of 2008***

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

#### **Retrospective application**

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

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

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

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



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

### ***Relevant extract from the response from the Treasurer***

I refer to the letter of 19 June 2008 from the Secretary of the Standing Committee for the Scrutiny of Bills concerning the Excise Tariff Amendment (Condensate) Bill 2008.

This Bill allows the Commissioner of Taxation to make by-laws for the purposes of the *Excise Tariff Act 1921* in relation to prescribing a condensate production area with effect from a date before the by-laws are registered under the *Legislative Instruments Act 2003* (proposed new subsection 6CA(13)). The Bill also allows the Commissioner of Taxation to make these by-laws with effect from a date before the date on which they are published in the Commonwealth *Gazette*, in circumstances where the by-law has the effect of imposing a higher rate of excise duty on condensate entered into home consumption (proposed new subsection 6CA(13A)).

The making of by-laws prescribing a condensate production area is part of the mechanism to impose the crude oil excise on the production of condensate. These by-laws cannot be made until after the Excise Tariff Amendment (Condensate) Bill 2008 receives Royal Assent. Consequently, the by-laws are required to apply retrospectively to enable the collection of revenue from midnight (Canberra time) 13 May 2008, as announced by the Government on 13 May 2008 in the 2008-09 Budget.

The making of by-laws with retrospective effect will not adversely impact taxpayers as the Government announced its intention for these arrangements to commence from midnight (Canberra time) on 13 May 2008. The Government introduced the implementing legislation into Parliament on 15 May 2008 to provide certainty to taxpayers. In this respect, I note that as a matter of practice the Committee does not generally comment where a measure commences from the date of announcement and implementing legislation is introduced into Parliament within six months of the announcement. This is the case with the Excise Tariff Amendment (Condensate) Bill 2008, together with the Excise Legislation Amendment (Condensate) Bill 2008.

The Committee thanks the Treasurer for this response.

Chris Ellison  
Chair



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28 AUG 2008

Senate Standing C'ttee  
for the Scrutiny of Bills

Senator the Hon Chris Ellison  
Chair of the Standing Committee for the Scrutiny of Bills  
Parliament House  
CANBERRA ACT 2600

27 AUG 2008

Dear Senator Ellison

I refer to the letter of 19 June 2008 from the Secretary of the Standing Committee for the Scrutiny of Bills concerning the Excise Tariff Amendment (Condensate) Bill 2008.

This Bill allows the Commissioner of Taxation to make by-laws for the purposes of the *Excise Tariff Act 1921* in relation to prescribing a condensate production area with effect from a date before the by-laws are registered under the *Legislative Instruments Act 2003* (proposed new subsection 6CA(13)). The Bill also allows the Commissioner of Taxation to make these by-laws with effect from a date before the date on which they are published in the *Commonwealth Gazette*, in circumstances where the by-law has the effect of imposing a higher rate of excise duty on condensate entered into home consumption (proposed new subsection 6CA(13A)).

The making of by-laws prescribing a condensate production area is part of the mechanism to impose the crude oil excise on the production of condensate. These by-laws cannot be made until after the Excise Tariff Amendment (Condensate) Bill 2008 receives Royal Assent. Consequently, the by-laws are required to apply retrospectively to enable the collection of revenue from midnight (Canberra time) 13 May 2008, as announced by the Government on 13 May 2008 in the 2008-09 Budget.

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Yours sincerely

WAYNE SWAN