

2008-2009

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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EXCISE TARIFF VALIDATION BILL 2009  
CUSTOMS TARIFF VALIDATION BILL 2009

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EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Hon Wayne Swan MP and the  
Minister for Home Affairs, the Hon Bob Debus MP)







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# **General outline and financial impact**

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## **Validation of increased duty on certain alcoholic beverages**

The Excise Tariff Validation Bill 2009 and the Customs Tariff Validation Bill 2009 provide for the validation of all duties demanded or collected before 14 May 2009 because of the *Excise Tariff Proposal (No. 1) 2008* and the *Customs Tariff Proposal (No. 1) 2008* so that they are taken to have been lawfully imposed and lawfully demanded or collected.

**Date of effect:** 14 May 2009.

**Proposal announced:** On 15 April 2009, in a joint press release issued by the Treasurer and the Minister for Health and Ageing.

**Financial impact:** These measures will validate revenues already collected to the value of:

<i>Revenue</i>	<i>2007-08</i>	<i>2008-09</i>
Australian Taxation Office	\$21.7m	\$139.2m
Australian Customs and Border Protection Service	\$44.0m	\$180.4m
Goods and services tax	\$6.6m	\$32.0m
Total revenue	\$72.3m	\$351.6m

Note: For purposes of the Government's forward estimates the above figures in the table would be zero as such estimates currently assume the tariff proposals are supported by Parliament.

**Compliance cost impact:** No significant compliance and administrative costs are expected resulting from the validation of the revenue.



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# **C**hapter 1

## ***Validation of increased duty on certain alcoholic beverages***

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### **Outline of chapter**

1.1 This chapter explains how the Excise Tariff Validation Bill 2009 and the Customs Tariff Validation Bill 2009 will operate to ensure the validation of increased duty on certain alcoholic beverages.

### **Context of the new law**

1.2 Excise is a tax on certain goods produced in Australia including alcoholic beverages (other than wine). Imported goods comparable to those subject to excise, known as 'excise-equivalent goods', attract customs duty that includes a component at the same rate as the excise rate. This component is commonly referred to as 'excise-equivalent customs duty'.

1.3 Excise and excise-equivalent customs duty apply to 'other excisable beverages not exceeding 10 per cent by volume of alcohol'. Such beverages are commonly referred to as 'alcopops' or 'ready-to-drink' beverages or 'RTDs' and are broadly described as mixtures of alcohol, in particular distilled spirits, with fruit juices or other flavouring.

1.4 Under tariff proposals the Government increased the excise and excise-equivalent customs duty rate applying to other excisable beverages not exceeding 10 per cent by volume of alcohol (alcopops) from \$39.36 per litre of alcohol content to \$66.67 per litre of alcohol content on and from 27 April 2008. This rate was increased to \$68.54 per litre of alcohol content on 1 August 2008 and increased again to \$69.16 per litre of alcohol content on 2 February 2009 as a result of the bi-annual indexation of excise and excise-equivalent customs duty rates.

1.5 The higher rate under the excise tariff was announced in the *Commonwealth Government Special Notices Gazette No. S87* of 26 April 2008 under section 160B of the *Excise Act 1901* while the higher rate under the customs tariff was announced in the *Commonwealth*

*Government Special Notices Gazette No. S88 of 26 April 2008 under section 273EA of the Custom Act 1901.*

1.6 The higher rate was contained in the *Excise Tariff Proposal (No. 1) 2008* and the *Customs Tariff Proposal (No. 1) 2008* that were tabled in the House of Representatives on 13 May 2008.

1.7 On 18 March 2009, the Senate negated Bills that would have confirmed the ongoing rate of excise or excise-equivalent customs duty payable on alcopops in accordance with the tariff proposals.

1.8 Since then, the duty associated with the higher rate applicable under the tariff proposals has continued to be collected as a result of the statutory protections offered under section 114 of the *Excise Act 1901* and section 226 of the *Customs Act 1901*.

1.9 These sections provide protection to the Australian Taxation Office and the Australian Customs and Border Protection Service officers from commencement of legal proceedings for anything done by them for the protection of the revenue in relation to a tariff alteration proposed in the Parliament. This protection applies until the close of the Parliamentary session in which that tariff alteration is proposed or before the expiration of 12 months after the alteration is proposed, whichever occurs first.

1.10 Under such statutory protections the higher rate of duty on alcopops may be collected until the last moment of 13 May 2009.

1.11 Validation Bills supported by Parliament can be used to validate revenue collected under statutory protection to ensure that it has been lawfully imposed and lawfully demanded and collected.

## **Summary of new law**

1.12 The Excise Tariff Validation Bill 2009 and the Customs Tariff Validation Bill 2009 would permit all excise and excise-equivalent customs duties demanded or collected relevant to the *Excise Tariff Proposal (No. 1) 2008* and the *Customs Tariff Proposal (No. 1) 2008* to have been lawfully imposed and lawfully demanded and collected. This covers the period of collection of duty from 27 April 2008 to 13 May 2009 inclusive.



## Detailed explanation of new law

1.13 The Excise Tariff Validation Bill 2009 and cognate Customs Tariff Validation Bill 2009 provide for the validation of all duties demanded or collected as a result of the *Excise Tariff Proposal (No. 1) 2008* and the *Customs Tariff Proposal (No. 1) 2008* tabled in the House of Representatives on 13 May 2008. This is so they are taken to have been lawfully imposed and lawfully demanded or collected. [Section 3, *Excise Tariff Validation Bill 2009* and section 3 of the *Customs Tariff Validation Bill 2009*]

1.14 The Excise Tariff Validation Bill 2009 and the Customs Tariff Validation Bill 2009 also provide for the validation of all duties demanded or collected before 14 May 2009 as a result of the *Commonwealth Government Special Notices Gazette No. S87 and No. S88*, published on 26 April 2008, so that such duties are taken to have been lawfully imposed and lawfully demanded or collected. [Section 4, *Excise Tariff Validation Bill 2009* and section 4 of the *Customs Tariff Validation Bill 2009*]

1.15 The Bills cover a period of collection of revenue from 27 April 2008 to 13 May 2009 inclusive. [Sections 3 and 4, *Excise Tariff Validation Bill 2009* and sections 3 and 4 of the *Customs Tariff Validation Bill 2009*]

1.16 The proposed rate under the *Excise Tariff Proposal (No. 1) 2008* and the *Customs Tariff Proposal (No. 1) 2008* of \$66.67 per litre of alcohol content on alcopops increased to \$68.54 per litre of alcohol and again to \$69.16 per litre of alcohol content over the period of the tariff proposals as a result of the indexation of the duty rate. Indexation occurred on 1 August 2008 and 2 February 2009. To remove any doubt, the Bills validate collections of excise and excise-equivalent customs duty at the indexed rates. [Subsection 3(2), *Excise Tariff Validation Bill 2009* and subsection 3(2) of the *Customs Tariff Validation Bill 2009*]

1.17 The Excise Tariff Validation Bill 2009 and the Customs Tariff Validation Bill 2009 do not amend or affect the existing *Excise Act 1901*, the *Excise Tariff Act 1921*, the *Customs Act 1901* or the *Customs Tariff Act 1995*. Accordingly, the ongoing rates applicable to excise and excise-equivalent products remain unaffected by the Bills.

## Application and transitional provisions

1.18 The Excise Tariff Validation Bill 2009 and the Customs Tariff Validation Bill 2009 both commence on 14 May 2009. [Section 2, *Excise Tariff Validation Bill 2009* and section 2 of the *Customs Tariff Validation Bill 2009*]



