

**Parliament of the Commonwealth of Australia**

**SENATE ECONOMICS LEGISLATION  
COMMITTEE**

**CONSIDERATION OF LEGISLATION  
REFERRED TO THE COMMITTEE**

**Sales Tax (Customs) (Industrial Safety Equipment) Bill 2000  
Sales Tax (Excise)(Industrial Safety Equipment) Bill 2000  
Sales Tax (General) (Industrial Safety Equipment) Bill 2000  
Sales Tax (Industrial Safety Equipment)  
(Transitional Provisions) Bill 2000**

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# Senate Economics Legislation Committee

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# REPORT

## Reference of the Bills to the Committee

1.1 The following package of Bills was introduced into the House of Representatives on 11 May 2000:

- Sales Tax (Customs) (Industrial Safety Equipment) Bill 2000
- Sales Tax (Excise)(Industrial Safety Equipment) Bill 2000
- Sales Tax (General) (Industrial Safety Equipment) Bill 2000
- Sales Tax (Industrial Safety Equipment) (Transitional Provisions) Bill 2000.

1.2 Following a report by the Selection of Bills Committee, the Senate referred the Bill to this Committee on 8 June 2000 for examination and report by 22 June 2000.<sup>1</sup>

1.3 In particular, the Committee was asked to examine the provisions of the Bills which will remove an existing sales tax exemption on, among other things, sunglasses that are used for protective purposes by people in outdoor occupations; the implications on the not-for-profit sector of this increased impost; and the retrospectivity of these measures.

## The Committee's Inquiry

1.4 The Committee invited a number of interested parties to make submissions on the Bills, in addition to advertising the inquiry on the Parliament website. The Committee received 3 submissions to the inquiry (see Appendix 1).

1.5 The Committee held a public hearing on the Bills in Canberra on 19 June 2000. The witnesses who appeared at the hearing are shown in Appendix 2.

## The Bills

1.6 The Bills aim to modify the operation of the *Sales Tax (Exemptions and Classifications) Act 1992* to ensure that industrial safety equipment is only exempt from sales tax if it is of a kind that is mainly used to protect persons engaged in industrial operations.

## Background

1.7 The legislation is designed to restore the original intention of the sales tax exemption law that only a narrow range of industrial safety equipment would be exempt from sales tax. However, two recent Federal Court decisions have had the effect of expanding the range of exempt equipment. These decisions interpreted the wording of 1992 Sales Tax Exemption (ST (E&A)) Act more liberally than had been the Government's intention<sup>2</sup> with the following effect:

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1 Selection of Bills Committee Report No. 8 of 2000, dated 8 June 2000.

2 See Bills Digest No.172, Parliamentary Library, especially the background section.

As a result of these decisions, it is possible that a wide range of goods could now qualify for sales tax exemption as industrial safety equipment. Most of this equipment is only used to a minor extent by persons engaged in industrial operations. The equipment is mainly used outside industrial operations and does not have a primary purpose of protecting persons engaged in industrial operations.<sup>3</sup>

1.8 In particular, the decision *Commissioner of Taxation v. NSW Cancer Council* (1999) FCA 1146, held that Cancer Society sunglasses which complied with Australian Standard 1067.1 for reduction of sun glare were sales exempt because some outdoor workers use them to protect their eyes from glare and cancer. The implications of the decision are twofold. According to the Explanatory Memorandum to the bills:

The effect of that decision is that all sunglasses that meet Australian Standard 1067.1 and that are not fashion spectacles would be exempt from sales tax, even though most sunglasses are used as personal protection in activities unrelated to industrial operations or are used as fashion accessories. That decision is also in direct conflict with the policy underlying the sales tax exemption for spectacles in Item 85 in Schedule 1 to the ST (E&C) Act which specifically excludes sunglasses from exemption.<sup>4</sup>

### **Measures in the Bills**

1.9 The Bills are characterised as ‘modification’ Bills in that they modify the effect or operation of the ST (E&A) Act, but do not amend it. This is achieved mainly by substituting the word ‘ordinarily’ with ‘mainly’ so that the key clause defining the scope of the exemption will read:

Equipment of a kind *mainly* used in the course of industrial operations to protect persons engaged in those operations...[emphasis added]

1.10 ‘Mainly’ is defined to mean to the extent of more than 50 per cent of the time. The types of goods intended to be covered by the exemption include masks, respirators, shields, goggles, visors, helmets, belts and machine guards.

1.11 The Bills apply from 5 October 1999 when the Government announced its intention to modify the existing legislation. According to the Second Reading Speech:

The Government announced on 5 October 1999 that the sales tax law would be amended so that to qualify for sales tax exemption, goods would need to be of a kind that were mainly used to protect persons engaged in industrial operations. Refund claims lodged on or after 5 October 1999 which do not meet this criteria would be denied. The Government was concerned that refunds should not result in windfall gains for retailers who have passed the cost of the sales tax on to their customers. Accordingly, refund claims lodged before 5 October 1999 that meet the requirements of the existing exemption would only be paid where it can be shown that the benefit of the credit has passed to the end consumer.

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3 Second Reading Speech.

4 Explanatory Memorandum, p. 7.



1.12 The pass on provisions will allow for credit claims (ie, refunds of sales tax) for items sold before 5 October 1999 that do not meet the ‘mainly’ test only where the benefit of the credit has been passed onto the end consumer. Credit claims will be allowed for items that meet the new ‘mainly’ test. These provisions will also allow wholesalers who sold goods as sales tax exempt following the Federal Court decisions to claim a credit so long as it can be shown that the benefit of the exemption (ie, a lower price) was passed on to not only the retailer but also the end consumer. Where the benefit has not been passed on, credit claims will not be allowed.

### **Issues in Evidence**

1.13 All three groups of witnesses that gave evidence to the Committee – the Australian Cancer Society, the Sunglasses Association of Australia, and the Institute of Chartered Accountants in Australia (ICAA)<sup>5</sup> – were opposed to the Bills, although their reasons differed to some degree. In broad terms, the Cancer Society and Sunglasses Association were opposed to the Bills particular effect in reversing the exemption on sunglasses. The ICAA’s criticism of the Bills reflected its more general opposition to the principle of retrospectivity, while all three bodies pointed to the impracticality of the passing on provisions so far as they relate to sunglasses. The Committee examines these issues below, in addition to examining the implications for the not-for-profit sector of the removal of sales tax on sunglasses.

### **The Bills Effect on Sunglasses**

1.14 Both the Cancer Society and Sunglasses Association pointed to not only occupational health and safety factors but also the wider public health benefits of exempting sun glare resistant sunglasses from sales tax. Both bodies stated that Australia has the highest levels of ultraviolet radiation in the world which causes or contributes to injury or diseases of the eye, skin and region of the eye. Both argued that the disease prevention role of sunglasses justified an exemption from sales tax. According to Dr Penman of the Cancer Society:

The Australian Cancer Society recommends that all Australians wear sunglasses to protect their eyes when exposed to UV radiation and visible light. Government bodies themselves, including WorkSafe, and departments that are responsible for occupational health and safety issues, as well as employer and employee organisations, also recommend sunglasses for protection of workers. The efficacy of this measure in protection is unquestioned by all parties. The most effective way to protect the eyes against exposure to solar radiation is to wear sunglasses that comply with Australian Standard 1067.1 and a broad-brimmed hat, reducing ultraviolet radiation exposure to the eyes by up to 98 per cent. Any product that protects the Australian public from the risks associated with solar radiation deserves concessional sales tax treatment. Sunglasses complying with the standards should be afforded the same exemption as had already been established for sunscreen.<sup>6</sup>

1.15 In evidence, witnesses from the Australian Taxation Office (ATO) indicated that the public health benefits of sunglasses were not at issue. Rather, the main point of the legislation

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5 The ICAA presented evidence also on the behalf of the Australian Society of Certified Practising Accountants, the Law Council of Australia and the National Institute of Accountants.

6 Evidence, p. E 22. See also Australian Cancer Society and the Centre for Eye Research Australia Position Statement, ‘Eye Protection’, in Submission No. 2.

concerned the Parliament's intention as to what items should be exempt from sales tax on industrial safety grounds. Mr McCarthy representing the ATO noted:

It really is a question of the public policy about what the parliament intends to have exempt as safety equipment under item 20 [in the legislation]. We would suggest that the specific exclusion of sunglasses under exemption item 85, which deals with spectacles, indicates that it is not the public policy of the government to provide sunglasses. One would suggest that the proposed treatment under the GST would also indicate the public policy position of the government, and the parliament, is not to provide exemption for sunglasses.<sup>7</sup>

1.16 Mr McCarthy noted also that the legislation is not targeted at sunglasses but is intended to prevent claims for a wider range of goods to be treated as exempt.<sup>8</sup> Mr McCarthy indicated that the ATO is currently facing litigation which is seeking exemption for illuminated exit lights and scaffolding. Mr McCarthy also explained that the estimated risk to the revenue of \$1.9 billion reflects the ATO's concern that the Federal Court's decisions open the way for an 'endless' range of goods to be exempt from sales tax.<sup>9</sup>

### **Implications for the Not-For-Profit Sector**

1.17 The Cancer Society estimated that the direct financial implications of the Bills on the Society could be close to \$1 million.<sup>10</sup> Dr Penman stated that the loss of the sales tax refund would deprive the Cancer Society from ploughing the refund back into cancer prevention, research, education and support.

1.18 With regard to the Bills' pass on provisions, Dr Penman noted that the Cancer Society had either passed on the benefits to consumers in the form of price reductions and refunds or would use the funds to support public health programs.<sup>11</sup> As such, it is mistaken, in the Society's view, to suggest that it would enjoy windfall profits in the event that it did not pass on the refund to consumers. In response, the ATO stated:

The Cancer Society did point out in their written submission that they have an intention to use the funds that they might otherwise receive back as refunds for worthy purposes of research, and we accept that. Our position, unfortunately, is that we would be unable to discriminate between the worthy motives of the Cancer Society and other retailers who have other motives. The motives of retailers are just not relevant.<sup>12</sup>

### **Retrospectivity**

1.19 In evidence, witnesses raised two main concerns about the retrospectivity of the legislation, namely:

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7 Evidence, p. E 32.

8 Evidence, p. E 32.

9 Evidence, p. E 33.

10 Evidence, p. E 24.

11 Evidence, p. E 23.

12 Evidence, p. E 32.

- that it was wrong in principle; and
- that the pass on provisions are impractical with respect to the sunglasses industry.

1.20 The ICAA opposed the retrospective aspect of the legislation at both the general level of principle and in the particular case of the legislation's effect on sunglasses. Mr Firmstone representing the ICAA indicated that the Institute sees legislation which has retrospective implications as 'absolutely undesirable' and believes it is only justified under limited circumstances, such as in the event of massive rorting of the tax system. In the ICAA's view, such special circumstances do not apply in relation to sunglasses.

1.21 Moreover, Mr Firmstone suggested that the retrospectivity of the Bills may send a negative message to the community that implies there is no point in challenging the ATO's interpretation of the law because, even if a challenge were successful in court, the court's decision could be reversed.<sup>13</sup> Mr Guy representing the Sunglasses Association advanced a similar argument:

Our position is we have now been through two stages of the court process and won on both occasions. You would really have to question the logic then of, after having won on these two occasions, that a law would be changed retrospectively to make the whole process a waste of time for everybody. I wonder under what circumstances anyone would take on the Australian Taxation Office in the future where there is no confidence, after having gone through these two and possibly three processes, that the law might then be changed to make it all a waste of time.<sup>14</sup>

1.22 In responding to these general claims, Mr McCarthy of the ATO made it clear that the legislation relates to a particular case with significant implications for the revenue and does not reflect the ATO's general position on court decisions:

We will, in most cases, accept the decision given to us by the Federal Court or the High Court and issue rulings as to how the law ought to apply. Nevertheless, we do have a responsibility to advise government if the impact is significant, and in this case we suggest the impact is significant in the form of the revenue involved and also because it is quite obviously giving, in our view, an exemption for goods that the parliament never intended should be exempt. We accept the principles that were put in the ICAA's submission about retrospectivity – that is, the fact that it should provide natural justice – again, balanced by what we see in our case as a responsibility to ensure that a significant amount of revenue is not lost.<sup>15</sup>

1.23 Witnesses also criticised the retrospective aspects of the Bills which relate to the pass on/windfall profit provisions.<sup>16</sup> Both the Cancer Society and the Sunglasses Association pointed to the practical difficulties involved in determining whether sales tax had been passed onto consumers or absorbed by retailers prior to 5 October 1999. Both bodies claimed that

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13 Evidence, p. E 29.

14 Evidence, p. E 27.

15 Evidence, p. E 33.

16 See paragraphs 1.11-1.12 above.

these practical hurdles would mean they would not be able to obtain a refund for sales predating 5 October 1999 under the legislation, a situation that each argued was unfair.<sup>17</sup>

1.24 The ATO witnesses accepted the difficulties facing the sunglasses industry in passing on benefits to consumers but noted that other industries would not face the same problems.<sup>18</sup>

### **Recommendation**

1.25 The Committee recommends that the Senate pass the Bills.

**Senator the Hon Brian Gibson**  
**Chairman**

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17 Evidence, pp. E 23, E 26.

18 Evidence, p. E 33.

**APPENDIX 1****LIST OF SUBMISSIONS**

- No. 1 The Institute of Chartered Accountants in Australia
- No. 2 Australian Cancer Society
- No. 3 Fallon Group



**APPENDIX 2****LIST OF WITNESSES  
APPEARING BEFORE THE COMMITTEE****Monday, 19 June 2000**

Committee Room 1S3, Parliament House, Canberra

**Australian Cancer Society**

Dr Andrew Penman, Chair, Public Health Committee

**Sunglasses Association of Australia**

Mr Adrian Firmstone, Consultant

Mr Julian Guy, Member

Mr Grant Wilson, Member representing Oakley Sunglasses

**Australian Taxation Office**

Mr Nigel Goodwin, Executive Level Officer

Mr John McCarthy, Assistant Commissioner