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About this compilation

This compilation

This is a compilation of the *Excise Act 1901* that shows the text of the law as amended and in force on 1 July 2024 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to Excise

Part I—Introductory

1 Short title

This Act may be cited as the *Excise Act 1901*.

2 Commencement

This Act shall commence on a day to be fixed by Proclamation.

4 Definitions

(1) In this Act, except where otherwise clearly intended:

apply, in relation to an LPG remission, has a meaning affected by subsection (5).

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

approved place means:

- (a) premises covered by a storage licence; or
- (b) premises, other than premises that are a factory, covered by a manufacturer licence.

Australia does not include:

- (aa) Norfolk Island; or
- (a) the Territory of Christmas Island; or
- (b) the Territory of Cocos (Keeling) Islands.

authorised officer, in relation to a section of any of the Excise Acts, means an officer authorised in writing by the CEO to exercise the powers or perform the functions of an authorised officer under that section.

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beer means any liquor on which, under the name of beer, any duty of excise imposed by the Parliament is payable.

Bulk container means a container that has the capacity to have packaged in it more than 2 litres of liquid.

By authority means by the authority of an officer doing duty in the matter in relation to which the expression is used.

CEO means the Commissioner of Taxation.

Collector means:

- (a) the CEO; or
- (b) in relation to a section of an Excise Act for which a person is an authorised officer—that authorised officer.

Commonwealth authority means an authority or body established for a purpose of the Commonwealth by or under a law of the Commonwealth (including an Ordinance of the Australian Capital Territory).

condensate means either:

- (a) liquid petroleum; or
- (b) a substance:
 - (i) that is derived from gas associated with oil production; and
 - (ii) that is liquid at standard temperature and pressure.

Container means any article capable of holding liquids.

Note: **Container** is defined differently in section 87 and in Division 1A of Part IX.

conveyance means an aircraft, railway rolling stock, vehicle or vessel of any kind.

dealer licence has the meaning given by subsection 38(5).

Duty or **Excise duty** means duty of Excise.

eligible business entity has the meaning given by subparagraph 61C(1)(b)(ia).

Excisable goods means goods in respect of which excise duty is imposed by the Parliament, and includes goods the subject of an Excise Tariff or Excise Tariff alteration proposed in the Parliament.

excisable LPG use in relation to LPG:

- (a) means the use of LPG in a system for supplying fuel to an internal combustion engine of either a motor vehicle or a vessel, either directly or by filling another tank connected to such an engine; but
- (b) does not include the use of LPG for a motor vehicle that:
 - (i) is designed merely to move goods with a forklift and is for use primarily off public roads; or
 - (ii) is of a kind prescribed by the regulations for the purposes of this subparagraph.

Excise Acts means this Act and any instruments (including rules, regulations or by-laws) made under this Act and any other Act, and any instruments (including rules, regulations or by-laws) made under any other Act, relating to excise in force within the Commonwealth or any part of the Commonwealth.

excise place means:

- (a) a factory; or
- (b) an approved place; or
- (c) premises covered by a producer licence or dealer licence.

Excise Tariff means an Act imposing duties of excise and includes such an Act that has not come into operation.

Factory means premises on which any person is licensed to manufacture excisable goods, and includes all adjoining premises used in connexion therewith or with the business of the licensed manufacturer.

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Finance Minister has the meaning given by the *Income Tax Assessment Act 1997*.

fuel means goods of a kind that fall within a classification in item 10, 20 or 21 of the Schedule to the Excise Tariff.

gaseous fuel means compressed natural gas, liquefied natural gas or liquefied petroleum gas.

Gazette notice means a notice signed by the CEO and published in the *Gazette*.

International aircraft has the same meaning as **aircraft** has in Part VII of the *Customs Act 1901*.

Justice means any Justice of the Peace having jurisdiction in the place.

licence has the meaning given by subsection 38(1).

licensed dealer means a person or partnership who holds a dealer licence.

licensed manufacturer means a person or partnership who holds a manufacturer licence.

licensed producer means a person or partnership who holds a producer licence.

liquid petroleum is a mixture of hydrocarbons:

- (a) that is produced from gas wells; and
- (b) that is liquid at standard temperature and pressure after recovery in surface separation facilities;

but does not include a substance referred to in paragraph (b) of the definition of condensate.

LPG means:

- (a) liquid propane; or
- (b) a liquid mixture of propane and butane; or

- (c) a liquid mixture of propane and other hydrocarbons that consists mainly of propane; or
- (d) a liquid mixture of propane, butane and other hydrocarbons that consists mainly of propane and butane.

LPG remission in relation to LPG means a remission, refund or rebate of excise duty that applies to LPG under regulations made under section 78 because the LPG is not intended to be used for an excisable LPG use.

Manufacture includes all processes in the manufacture of excisable goods and, in relation to beer, includes the provision to the public at particular premises of commercial facilities and equipment for use in the production of beer at those premises.

manufacturer licence has the meaning given by subsection 38(2).

officer means a person employed or engaged under the *Public Service Act 1999* who is:

- (a) exercising powers; or
- (b) performing functions;

under, pursuant to or in relation to a taxation law (as defined by the *Taxation Administration Act 1953*).

Overseas ship has the same meaning as **ship** has in Part VII of the *Customs Act 1901*.

penalty day, in relation to an offence, means:

- (a) if the Court knows the day on which the offence was committed—that day; or
- (b) otherwise—the day on which the prosecution for the offence is instituted.

Permission means the written permission of the Collector.

Place includes ship or aircraft.

Place outside Australia does not include:

- (a) a ship or an area of waters, outside Australia; or

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- (b) an installation outside Australia; or
- (c) a reef or an uninhabited island outside Australia.

producer licence has the meaning given by subsection 38(4).

proprietor of an approved place means a person or partnership who holds a storage licence that covers that place.

quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

Resources Minister has the meaning given by the *Petroleum Resource Rent Tax Assessment Act 1987*.

Ship means any vessel used in navigation, other than air navigation, and includes a barge, lighter or any other floating vessel.

small business entity has the meaning given by section 328-110 (other than subsection 328-110(4)) of the *Income Tax Assessment Act 1997*.

Spirit means goods described in item 3 of the Schedule to the *Excise Tariff Act 1921*.

standard temperature and pressure means a temperature of 20° centigrade and a pressure of one standard atmosphere.

storage licence has the meaning given by subsection 38(3).

This Act includes all Excise Acts incorporated therewith and all regulations made under this Act or any such Excise Act.

tobacco has a meaning affected by subsection (6).

tobacco bale label means a label that:

- (a) is in a form approved in writing by the Commissioner of Taxation; and
- (b) uniquely identifies a bale of tobacco leaf.

tobacco goods means goods mentioned in subitem 5.1, 5.5 or 5.8 of the table in the Schedule to the *Excise Tariff Act 1921*.

Warehouse means a warehouse licensed under the *Customs Act 1901*.

- (2) A reference in this Act to a police officer shall be read as a reference to a member or special member of the Australian Federal Police or a member of the Police Force of a State or Territory.
- (3) A reference in this Act or in any other Act to an Excise Tariff or Excise Tariff alteration proposed in the Parliament shall be read as a reference to an Excise Tariff or Excise Tariff alteration proposed by a motion moved in the House of Representatives, and an Excise Tariff or Excise Tariff alteration proposed by a motion so moved shall be deemed to have been proposed in the Parliament at the time at which the motion was moved.
- (4) For the purposes of this Act, where the Schedule to the *Excise Tariff Act 1921* applies in respect of goods, excise duty shall be taken to be imposed by the Parliament in respect of those goods notwithstanding that the word “Free” is specified in the column headed “Rate of Duty” in that Schedule as the rate of duty chargeable on those goods.
- (5) To avoid doubt, an LPG remission ceases to ***apply*** in relation to LPG if the excise duty on the LPG is subsequently paid (despite the remission having previously applied).
- (6) For the purposes of this Act, treat as tobacco any thing (including moisture) added to the tobacco leaf during manufacturing or processing.

4AAA Act not to apply so as to exceed Commonwealth power

- (1) Unless the contrary intention appears, if a provision of this Act:
 - (a) would, apart from this section, have an invalid application;
but

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- (b) also has at least one valid application;
it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.
- (2) Despite subsection (1), the provision is not to have a particular valid application if:
- (a) apart from this section, it is clear, taking into account the provision's context and the purpose or object underlying the Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth's legislative power; or
 - (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth's legislative power.
- (3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).
- (4) This section applies to a provision of this Act, whether enacted before, at or after the commencement of this section.
- (5) In this section:

application means an application in relation to:

- (a) one or more particular persons, things, matters, places, circumstances or cases; or
- (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

invalid application, in relation to a provision, means an application because of which the provision exceeds the Commonwealth's legislative power.

valid application, in relation to a provision, means an application that, if it were the provision's only application, would be within the Commonwealth's legislative power.

4A Certain installations to be part of Australia

- (1) For the purposes of the Excise Acts:
- (a) a resources installation that becomes attached to, or that is, at the commencement of this subsection, attached to, the Australian seabed; or
 - (b) a sea installation that becomes installed in, or that is, at the commencement of this subsection, installed in, an adjacent area or a coastal area;
- shall, subject to subsections (2) and (3), be deemed to be part of Australia.
- (2) A resources installation that is deemed to be part of Australia because of the operation of this section shall, for the purposes of the Excise Acts, cease to be part of Australia if:
- (a) the installation is detached from the Australian seabed, or from another resources installation attached to the Australian seabed, for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits); or
 - (b) after having been detached from the Australian seabed otherwise than for the purpose referred to in paragraph (a), the installation is moved for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits).
- (3) A sea installation that is deemed to be part of Australia because of the operation of this section shall, for the purposes of the Excise Acts, cease to be part of Australia if:
- (a) the installation is detached from its location for the purpose of being taken to a place that is not in an adjacent area or in a coastal area; or
 - (b) after having been detached from its location otherwise than for the purpose referred to in paragraph (a), the installation is moved for the purpose of being taken to a place that is not in an adjacent area or in a coastal area.

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- (4) In this section:
- (a) *adjacent area, Australian seabed, coastal area, resources installation* and *sea installation* have the same respective meanings as in the *Customs Act 1901*;
 - (b) a resources installation shall be taken to be attached to the Australian seabed if it would be taken to be so attached for the purposes of the *Customs Act 1901*;
 - (c) a sea installation shall be taken to be installed in an adjacent area if it would be taken to be so installed for the purposes of the *Customs Act 1901*; and
 - (d) a sea installation shall be taken to be installed in a coastal area if it would be taken to be so installed for the purposes of the *Customs Act 1901*.

5 Penalty at foot of sections

The penalties referred to at the foot of sections indicate that any contravention of the section whether by act or omission is an offence against this Act punishable on conviction by a penalty not exceeding the penalty mentioned.

6 Application of Act

This Act is incorporated and shall be read as one with the other Excise Acts except in so far as this Act is inconsistent with another Excise Act or other provision is made in another Excise Act.

6A How this Act applies to partnerships

- (1) This Act applies to a partnership as if the partnership were a person, but it applies with the changes set out in subsections (2), (3), (4), (5) and (6).
- (2) If this Act would otherwise require or permit something to be done by the partnership, the thing may be done by one or more of the partners on behalf of the partnership.

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- (3) If under this Act a document is given to a partner of the partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.
- (4) An obligation that would otherwise be imposed on the partnership by this Act:
 - (a) is imposed on each partner instead; but
 - (b) may be discharged by any of the partners.
- (5) The partners are jointly and severally liable to pay an amount that would otherwise be payable by the partnership under this Act.
- (6) An offence against this Act that would otherwise be committed by the partnership is taken to have been committed by each partner who:
 - (a) aided, abetted, counselled or procured the relevant act or omission; or
 - (b) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly or whether by any act or omission of the partner).
- (7) If, for the purposes of subsection (6), it is necessary to establish that the partnership engaged in particular conduct, it is sufficient to show that the conduct was engaged in by a partner within the scope of his or her actual or apparent authority. If it is also necessary to establish that the partnership had a particular state of mind when it engaged in that conduct, it is sufficient to show the partner had the relevant state of mind.
- (8) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

6B Application of the *Criminal Code*

- (1) Subject to subsection (2), Chapter 2 of the *Criminal Code* applies to an offence against this Act.
- (2) For the purposes of an Excise Prosecution:
 - (a) Parts 2.1, 2.2, 2.3 and 2.4 of the *Criminal Code* apply; and

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- (b) Parts 2.5 and 2.6 of the *Criminal Code* do not apply; and
 - (c) a reference to criminal responsibility in Chapter 2 of the *Criminal Code* is taken to be a reference to responsibility.
- (3) This section is not to be interpreted as affecting in any way the nature of any offence under this Act, the nature of any prosecution or proceeding in relation to any such offence, or the way in which any such offence is prosecuted, heard or otherwise dealt with.
- (4) Without limiting the scope of subsection (3), this section is not to be interpreted as affecting in any way the standard or burden of proof for any offence under this Act that is the subject of an Excise Prosecution.
- (5) In this section:
Excise Prosecution has the meaning given in section 133.

Part II—Administration

7 General administration of Act

The CEO has the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

8 Delegation by Minister

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to an officer all or any of the Minister's powers under any Excise Act, other than this power of delegation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of the Excise Act that conferred the power, be deemed to have been exercised by the Minister.
- (3) A delegation under this section does not prevent the exercise of a power by the Minister.

15 Time for compliance with this Act

- (1) Where under any Excise Tariff or Excise Tariff alteration proposed in the Parliament any excise duty is proposed to be imposed on any goods previously free, any person who manufactures or proposes to manufacture those goods shall be allowed until the end of the transition period to comply with the provisions of this Act relating to licences.
- (2) However, during the transition period:
 - (a) a person who manufactures those goods without holding a manufacturer licence must comply with this Act as if the person held such a licence; and

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- (b) the premises on which the person manufactures those goods are taken to be a factory.

(3) In this section:

first day means the day on which the Excise Tariff or Excise Tariff alteration is proposed in the Parliament.

transition period means the period starting at the start of the first day and ending either:

- (a) 2 months after the end of the first day; or
- (b) if, before the end of those 2 months:
 - (i) the person applies for a manufacturer licence for the goods; and
 - (ii) the Collector has not decided whether to grant, or refuse to grant, that licence;at the earliest of the following:
 - (iii) 12 months after the end of the first day;
 - (iv) the end of the last day (if any) for the goods determined under subsection (4);
 - (v) the end of the day the Collector grants, or refuses to grant, the manufacturer licence.

(4) For the purposes of this section, the Collector may, by legislative instrument, determine the last possible day of the transition period (the **last day**) for particular goods. Such a day must be a day occurring:

- (a) after:
 - (i) the day the determination was made; and
 - (ii) the end of the 2 months starting at the end of the first day; but
- (b) before the end of the 12 months starting at the end of the first day.

16 Right to require security

The CEO shall have the right to require and take securities for compliance with the Excise Acts and generally for the protection of the revenue and pending the giving of the required security in relation to any goods subject to the control of the CEO may refuse to deliver the goods or to pass any entry relating thereto.

Note: Authorities given under section 114C of the *Customs Act 1901* can be subject to conditions relating to securities under this section.

17 Form of security

A security shall be given in a manner and form approved by a Collector and may, subject to that approval, be by bond, guarantee, cash deposit or any other method, or by 2 or more different methods.

18 General security may be given

When security is required for any particular purpose security may by the authority of the CEO be accepted to cover all transactions for such time and for such amount as the CEO may approve.

19 Cancellation of bonds

All securities taken for compliance with the Excise Acts may after the expiration of 3 years from the date thereof or from the time specified for the performance of the conditions thereof be cancelled by the CEO.

20 New sureties

If the Collector is not at any time satisfied with the sufficiency of any security he or she may require a fresh security and a fresh security shall be given accordingly.

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21 Form of security

The form of security in Schedule I shall suffice for all the purposes of a bond or guarantee under any Excise Act and without sealing shall bind its subscribers as if sealed and unless otherwise provided therein jointly and severally and for the full amount.

22 Effect of security

Whenever any such security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment for their stated liability against the persons appearing to have executed it unless the defendants shall prove compliance with the condition or that the security was not executed by them or release or satisfaction.

24 Excisable goods and goods liable to duties of Customs may be used in manufacturing excisable goods

- (1) Excisable goods may, while subject to the CEO's control, be used in the manufacture of other excisable goods in accordance with this Act.
- (2) Goods liable to duties of Customs may, while subject to customs control under the *Customs Act 1901*, be used in the manufacture of excisable goods in accordance with this Act.
- (3) The regulations may prescribe conditions on the use of:
 - (a) excisable goods, while subject to the CEO's control, in the manufacture of other excisable goods; or
 - (b) goods liable to duties of Customs, while subject to customs control under the *Customs Act 1901*, in the manufacture of excisable goods.

Part III—Manufacturers, producers and dealers

Division 1—Manufacturers

25 Only licensed manufacturers to manufacture excisable goods

- (1) A person who does not hold a manufacturer licence must not intentionally manufacture excisable goods knowing, or being reckless as to whether, the goods are excisable goods.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
(b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A person who does not hold a manufacturer licence must not manufacture excisable goods.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

26 Licensed manufacturers to manufacture in accordance with Act and licence

- (1) A licensed manufacturer must not intentionally manufacture excisable goods knowing, or being reckless as to whether, the manufacture contravenes this Act or the manufacturer licence.

Penalty: 2 years imprisonment or 500 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A licensed manufacturer must not manufacture excisable goods in contravention of this Act or the manufacturer licence.

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Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

27 Licensed manufacturers to manufacture only at licensed premises

- (1) A licensed manufacturer must not intentionally manufacture excisable goods at premises that are not covered by the manufacturer licence knowing, or being reckless as to whether, the goods are excisable goods and:

- (a) knowing the premises are not covered by the manufacturer licence; or
(b) being reckless as to whether the premises are covered by the manufacturer licence.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
(b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A licensed manufacturer must not manufacture excisable goods at premises that are not covered by the manufacturer licence.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

Division 2—Producers**28 Only licensed producers to produce tobacco leaf etc.**

- (1) A person who does not hold a producer licence must not intentionally produce material that is tobacco seed, tobacco plant or tobacco leaf knowing, or being reckless as to whether, the material is tobacco seed, tobacco plant or tobacco leaf.

Penalty:

- (a) for tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
- (b) for tobacco leaf—2 years imprisonment or the greater of:
- (i) 500 penalty units; and
 - (ii) 5 times the amount of duty, worked out under the regulations, being the duty that would be payable if the tobacco leaf had been manufactured into excisable goods and entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A person who does not hold a producer licence must not produce tobacco seed, tobacco plant or tobacco leaf.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

29 Licensed producers to produce in accordance with Act and licence

- (1) A licensed producer must not intentionally produce tobacco seed, tobacco plant or tobacco leaf knowing, or being reckless as to whether, the production contravenes this Act or the producer licence.

Penalty: 2 years imprisonment or 500 penalty units.

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Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A licensed producer must not produce tobacco seed, tobacco plant or tobacco leaf in contravention of this Act or the producer licence.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

30 Licensed producers to store tobacco leaf etc. at licensed premises

- (1) A licensed producer must not, without permission, intentionally keep or store material that is tobacco seed, tobacco plant or tobacco leaf at premises that are not covered by the producer licence knowing, or being reckless as to whether, the material is tobacco seed, tobacco plant or tobacco leaf and:

- (a) knowing the premises are not covered by the producer licence; or
(b) being reckless as to whether the premises are covered by the producer licence.

Penalty:

- (a) for tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
(b) for tobacco leaf—2 years imprisonment or the greater of:
(i) 500 penalty units; and
(ii) 5 times the amount of duty, worked out under the regulations, being the duty that would be payable if the tobacco leaf had been manufactured into excisable goods and entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A licensed producer must not, without permission, keep or store tobacco seed, tobacco plant or tobacco leaf at premises that are not covered by the producer licence.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

31 Licensed producers to produce tobacco leaf etc. at licensed premises

- (1) A licensed producer must not intentionally produce material that is tobacco seed, tobacco plant or tobacco leaf at premises that are not covered by the producer licence knowing, or being reckless as to whether, the material is tobacco seed, tobacco plant or tobacco leaf and:
- (a) knowing the premises are not covered by the producer licence; or
 - (b) being reckless as to whether the premises are covered by the producer licence.

Penalty:

- (a) for tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
- (b) for tobacco leaf—2 years imprisonment or the greater of:
 - (i) 500 penalty units; and
 - (ii) 5 times the amount of duty, worked out under the regulations, being the duty that would be payable if the tobacco leaf had been manufactured into excisable goods and entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A licensed producer must not produce tobacco seed, tobacco plant or tobacco leaf at premises that are not covered by the producer licence.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

Division 3—Dealers

33 Only licensed dealers to deal in tobacco leaf etc.

- (1) A person who does not hold a dealer licence must not intentionally deal in material that is tobacco seed, tobacco plant or tobacco leaf knowing, or being reckless as to whether, the material is tobacco seed, tobacco plant or tobacco leaf.

Penalty:

- (a) for tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
- (b) for tobacco leaf—2 years imprisonment or the greater of:
- (i) 500 penalty units; and
 - (ii) 5 times the amount of duty, worked out under the regulations, being the duty that would be payable if the tobacco leaf had been manufactured into excisable goods and entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A person who does not hold a dealer licence must not deal in tobacco seed, tobacco plant or tobacco leaf.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).
- (4) Subsections (1) and (2) do not apply to a licensed producer who:
- (a) transfers tobacco seed, tobacco plant or tobacco leaf that the producer has produced; or
 - (b) acquires tobacco seed or tobacco plant for the purpose of producing tobacco seed, tobacco plant or tobacco leaf.

Note: A defendant bears an evidential burden for the matters in subsection (4).

34 Licensed dealers to deal in accordance with Act and licence

- (1) A licensed dealer must not intentionally deal in tobacco seed, tobacco plant or tobacco leaf knowing, or being reckless as to whether, the dealing contravenes this Act or the dealer licence.

Penalty: 2 years imprisonment or 500 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A licensed dealer must not deal in tobacco seed, tobacco plant or tobacco leaf in contravention of this Act or the dealer licence.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

35 Licensed dealers to store tobacco leaf etc. at licensed premises

- (1) A licensed dealer must not, without permission, intentionally keep or store material that is tobacco seed, tobacco plant or tobacco leaf at premises that are not covered by the dealer licence knowing, or being reckless as to whether, the material is tobacco seed, tobacco plant or tobacco and:

- (a) knowing the premises are not covered by the dealer licence;
or
(b) being reckless as to whether the premises are covered by the dealer licence.

Penalty:

- (a) for tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
(b) for tobacco leaf—2 years imprisonment or the greater of:
(i) 500 penalty units; and

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- (ii) 5 times the amount of duty, worked out under the regulations, being the duty that would be payable if the tobacco leaf had been manufactured into excisable goods and entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A licensed dealer must not, without permission, keep or store tobacco seed, tobacco plant or tobacco leaf at premises that are not covered by the dealer licence.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

36 Licensed dealers to deal in tobacco leaf etc. at licensed premises

- (1) A licensed dealer must not intentionally carry on a business as a dealer at premises that are not covered by the dealer licence:
 - (a) knowing the premises are not covered by the dealer licence; or
 - (b) being reckless as to whether the premises are covered by the dealer licence.

Penalty: 2 years imprisonment or 500 penalty units.

- (2) A licensed dealer must not carry on a business as a dealer at premises that are not covered by the dealer licence.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

Part IV—Manufacturer, storage, producer and dealer licences

Division 1AA—Kinds of licences

38 Kinds of licences

Kinds of licences

- (1) Each of the following is a **licence** for the purposes of this Act:
- (a) a manufacturer licence;
 - (b) a storage licence;
 - (c) a producer licence;
 - (d) a dealer licence.

Manufacturer licences

- (2) A **manufacturer licence** is a licence granted under subsection 39A(1) that authorises the licence holder to do any of the following:
- (a) at one or more premises covered by the licence—manufacture kinds of excisable goods;
 - (b) at each premises covered by the licence—keep and store kinds of excisable goods on which duty has not been paid.

Note: Certain manufacturer licences may cover only one premises (see subsection 38A(2)).

Storage licences

- (3) A **storage licence** is a licence granted under subsection 39A(1) that authorises the licence holder to do any of the following, at each premises covered by the licence:
- (a) keep and store kinds of excisable goods on which duty has not been paid;
 - (b) carry out other activities authorised by the licence.

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Producer licences

- (4) A **producer licence** is a licence granted under subsection 39A(1) that authorises the licence holder to do any of the following, at the premises covered by the licence:
- (a) produce tobacco seed, tobacco plant or tobacco leaf;
 - (b) keep and store tobacco seed, tobacco plant and tobacco leaf.

Dealer licences

- (5) A **dealer licence** is a licence granted under subsection 39A(1) that authorises the licence holder to do any of the following at the premises covered by the licence:
- (a) deal in tobacco seed, tobacco plant and tobacco leaf;
 - (b) keep and store tobacco seed, tobacco plant and tobacco leaf.

38A Premises that licences may cover

- (1) A storage licence, or a manufacturer licence not covered by subsection (2), may cover one or more premises.
- (2) A manufacturer licence authorising the manufacture of any tobacco goods, a dealer licence or a producer licence may cover only one premises.

Division 1—Applications for licences

39 Applications for licences

- (1) An application for a licence may be made to the Collector.
- (2) The application must:
 - (a) be in a form (if any) approved by the CEO; and
 - (b) set out the name and address of the applicant; and
 - (c) set out the name and address of each person whom the Collector is required to consider for the purposes of paragraphs 39A(2)(b), (c), (e) and (f) and (2A)(a); and
 - (d) contain a description of each premises in relation to which the licence is sought; and
 - (e) set out such particulars of the matters that the Collector is required to consider for the purposes of sections 39A, 39B and 39C as will enable the Collector adequately to consider those matters; and
 - (g) contain such other information as is prescribed.

Division 2—The granting of licences

39A It is in the Collector's discretion whether to grant licence

- (1) The Collector may, by written notice given to the applicant, grant, or refuse to grant, a licence.
- (1A) Without limiting subsection (1), but subject to subsections (2) and (3) of this section and subsection 38A(2), if the application is for a licence that would cover more than one premises, the Collector may decide:
 - (a) to grant the licence under subsection (1) of this section covering any or all of the premises; or
 - (b) to refuse to grant the licence.
- (2) Without limiting subsection (1) but subject to subsection (3), the Collector may refuse to grant a licence if, in the Collector's opinion:
 - (a) where the applicant is a natural person—the applicant is not a fit and proper person; or
 - (b) where the applicant is a partnership—any of the partners is not a fit and proper person; or
 - (c) where the applicant is a company—any director, officer or shareholder of the company who would participate in the management or control of the company is not a fit and proper person; or
 - (e) where the applicant is a company—the company is not a fit and proper company; or
 - (f) the applicant is an associate (within the meaning of the *Income Tax Assessment Act 1997*) of a person who is not:
 - (i) a fit and proper person; or
 - (ii) a fit and proper company; or
 - (fa) if the applicant is a natural person—he or she does not have, and he or she does not have available to him or her, the skills and experience to carry out the activity that would be authorised by the licence; or

- (fb) if the applicant is a company—the company does not have available to it the skills and experience to carry out the activity that would be authorised by the licence; or
- (h) in relation to an application for a producer licence or dealer licence—the physical security of the storage place on the premises in relation to which the licence is sought is not adequate having regard to:
 - (i) the nature of the storage place; or
 - (ii) the quantity of tobacco leaf that would be kept at the storage place; or
 - (iii) the procedures and methods that would be adopted by the applicant to ensure the security of tobacco leaf at the storage place; or
- (ia) the applicant would not have a market for goods of a kind the licence would relate to; or
- (j) the applicant would not be able to keep proper books of account or records to enable the CEO adequately to audit those books or records; or
- (k) in relation to an application for a storage licence—the grant of the licence would delay liability for duty; or
- (l) refusal to grant the licence is necessary to protect the revenue; or
- (m) in relation to an application for a manufacturer licence that permits the manufacture of any tobacco goods—the applicant has previously failed to comply with a requirement to provide security under section 16; or
- (n) one or more of the following matters exist for each of the premises described in the application:
 - (i) a matter mentioned in paragraph (2A)(a);
 - (ii) if the application is for a manufacturer licence or storage licence—a matter mentioned in paragraph (2A)(b) or (c);whether or not the one or more matters existing for particular premises are the same for each premises.

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- (2A) Subject to subsection (3), the Collector may refuse to grant a licence that would cover particular premises if, in the Collector's opinion:
- (a) a natural person who would participate in the management or control of the premises is not a fit and proper person; or
 - (b) for an application for a manufacturer licence or storage licence—the physical security of the premises is not adequate having regard to:
 - (i) the nature of the premises; or
 - (ii) the kinds and quantity of goods that would be kept at the premises; or
 - (iii) the procedures and methods that would be adopted by the applicant to ensure the security of goods at the premises; or
 - (c) for an application for a manufacturer licence or storage licence—the plant and equipment that would be used in relation to goods at the premises are not suitable having regard to the nature of those goods and the premises.
- (3) If the application is for a producer licence or dealer licence, the Collector must not refuse to grant the licence on a ground mentioned in paragraph (2)(a), (b), (c) or (f), or the ground mentioned in paragraph (2)(n) relying on paragraph (2A)(a), unless the Collector is satisfied that it is necessary to refuse to grant the licence to protect the revenue.

39B Determining whether a natural person is fit and proper

The Collector may, in considering whether a natural person is a fit and proper person, have regard to:

- (a) whether, within one year before the application was made, the person has been charged with:
 - (i) an offence against a provision of the Excise Acts; or
 - (ii) an offence against a law of the Commonwealth, a State or a Territory that is punishable by imprisonment for a period of one year or longer or by a fine of 50 penalty units or more; and

- (b) whether, within 10 years before the application was made, the person was convicted of:
 - (i) an offence against a provision of the Excise Acts; or
 - (ii) an offence against a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of one year or longer or by a fine of 50 penalty units or more; and
- (ba) the extent of the person's compliance, within 4 years before the application was made, with any law administered by the CEO; and
- (c) whether the person has:
 - (i) held a licence which has been cancelled; or
 - (ia) held a licence which has been varied to no longer cover one or more premises; or
 - (ii) participated in the management or control of a company that has had its licence cancelled; or
 - (iii) participated in the management or control of a company that has had its licence varied to no longer cover one or more premises; and
- (ca) the person's financial resources; and
- (d) whether the person is an undischarged bankrupt; and
- (e) if the person is the applicant—any misleading statement made in the application by the person; and
- (f) if the person is the applicant and any statement by the person in the application was false—whether the person knew that the statement was false.

39C Determining whether a company is fit and proper

The Collector may, in considering whether a company is a fit and proper company, have regard to:

- (a) whether, within one year before the application was made, the company has been charged with:
 - (i) an offence against a provision of the Excise Acts; or

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- (ii) an offence against a law of the Commonwealth, a State or a Territory that is punishable by a fine of 50 penalty units or more; and
- (b) whether, within 10 years before the application was made, the company was convicted of:
 - (i) an offence against a provision of the Excise Acts; or
 - (ii) an offence against a law of the Commonwealth, a State or a Territory that is punishable by a fine of 50 penalty units or more; and
- (ba) the extent of the company's compliance, within 4 years before the application was made, with any law administered by the CEO; and
- (c) whether the company has held a licence that has been cancelled; and
- (caa) whether the company held a licence that has been varied to no longer cover one or more premises; and
- (ca) the company's financial resources; and
- (d) whether a receiver of the property, or part of the property, of the company has been appointed; and
- (e) whether the company is under administration within the meaning of the *Corporations Act 2001*; and
- (f) whether the company has executed under Part 5.3A of that Act a deed of company arrangement that has not yet terminated; and
- (fa) whether the company is under restructuring within the meaning of that Act; and
- (fb) whether the company has made, under Division 3 of Part 5.3B of that Act, a restructuring plan that has not yet terminated; and
- (h) whether the company is being wound up.

Division 3—Conditions and duration of licences

39D Conditions of licence

- (1) A licence is subject to the condition that the licence holder must, within 30 days after one of the following matters occurs, give the Collector particulars in writing of the matter:
- (a) one of the following persons is charged with an offence of the kind referred to in paragraph 39B(a):
 - (i) the licence holder;
 - (ii) where the licence holder is a partnership—a partner;
 - (iii) where the licence holder is a company—a person who participates in the management or control of the company;
 - (iv) a person who participates in the management or control of any of the premises covered by the licence;
 - (b) a person referred to in paragraph (a) of this subsection is convicted of an offence of the kind referred to in paragraph 39B(b) or becomes bankrupt;
 - (c) where the licence holder is a company—a person not described in the application for the licence as participating in the management or control of the company commences so to participate;
 - (d) a person not described in the application for the licence as participating in the management or control of any of the premises covered by the licence commences so to participate;
 - (e) where the licence holder is a partnership—there is a change in the membership of the partnership;
 - (f) where the licence holder is a company—any of the following events occurs:
 - (i) the company is charged with an offence of a kind referred to in paragraph 39C(a);
 - (ii) the company is convicted of an offence of a kind referred to in paragraph 39C(b);

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- (iii) a receiver of the property, or part of the property, of the company is appointed;
 - (iv) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
 - (v) the company executes a deed of company arrangement under Part 5.3A of that Act;
 - (va) a small business restructuring practitioner for the company is appointed under section 453B of that Act;
 - (vb) the company makes a restructuring plan under Division 3 of Part 5.3B of that Act;
 - (vi) the company begins to be wound up;
 - (g) in relation to a manufacturer licence or storage licence—there is a substantial change in:
 - (i) a matter affecting the physical security of any of the premises covered by the licence; or
 - (ii) the plant or equipment used in relation to goods at any of the premises covered by the licence;
 - (h) in relation to a producer licence or dealer licence—there is a substantial change in a matter affecting the physical security of the storage place on the premises covered by the licence;
 - (i) in relation to a manufacturer licence—the licence holder has ceased to manufacture excisable goods;
 - (j) in relation to a manufacturer licence or storage licence—the licence holder has ceased to keep and store goods at any of the premises covered by the licence;
 - (k) in relation to a producer licence—the licence holder has ceased to produce tobacco seed, tobacco plant and tobacco leaf;
 - (l) in relation to a dealer licence—the licence holder has ceased to deal in tobacco seed, tobacco plant and tobacco leaf.
- (2) A licence is subject to such other conditions (if any) as are prescribed.
- (3) A licence is subject to such other conditions (if any) as are specified in the licence, being conditions considered by the
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Collector to be necessary or desirable for the protection of the revenue or for the purpose of ensuring compliance with the Excise Acts.

Note: If the licence permits the manufacture of tobacco goods, the Collector must state the tobacco excise period in the licence and the licence holder must give a tobacco excise return for each tobacco excise period, see section 66.

- (4) The Collector may, upon application by the licence holder and upon the production of the licence and any relevant notice given under section 39DA:
- (a) vary or revoke a condition of the licence (other than a condition covered by subsection (1) or (2)); or
 - (b) impose an additional condition for the licence;
- by making an alteration to, or an endorsement on, the licence or notice.

39DA Changing licence conditions on own initiative

- (1) The Collector may, on his or her own initiative, do one or more of the following:
- (a) vary or revoke a condition of a licence (other than a condition covered by subsection 39D(1) or (2));
 - (b) impose an additional condition for the licence;
- by written notice given to the licence holder in accordance with subsection (3).
- (2) The Collector must be satisfied that the variation, revocation or imposition is necessary or desirable:
- (a) for the protection of the revenue; or
 - (b) for the purpose of ensuring compliance with the Excise Acts.
- (3) The notice must:
- (a) state the day (which must be at least 7 days after the day the notice is served) the variation, revocation or imposition is to take effect; and
 - (b) state that contravening a licence condition may make the licence holder liable for an offence; and

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- (c) be:
- (i) served, either personally or by post, on the licence holder; or
 - (ii) served personally on a person who, at the time of service, apparently participates in the management or control of any of the premises covered by the licence.

39E Duration of licences

- (1) A licence comes into force on the day it is granted.
- (2) A manufacturer licence authorising the manufacture of any tobacco goods, a dealer licence or a producer licence remains in force until the cancellation or expiry of the licence, whichever occurs first.
- (3) For the purposes of subsection (2), a licence expires at the end of:
 - (a) the 30 September after the second anniversary of the day on which the licence is granted; or
 - (b) if the licence is renewed under subsection 39F(5) one or more times—the last day of the 3 year period that begins on the day the licence would otherwise have expired if the most recent renewal had not occurred.

Example 1: A manufacturer licence that authorises the manufacture of tobacco goods is granted on 17 September 2025 and is not renewed. It expires at the end of 30 September 2027.

Example 2: A producer licence is granted on 18 October 2025 and is not renewed. It expires at the end of 30 September 2028.

Example 3: A dealer licence is granted on 20 March 2026. It is renewed under subsection 39F(5) on or before 30 September 2028, and is renewed again on or before 30 September 2031. It expires at the end of 30 September 2034.

- (4) A storage licence, or a manufacturer licence not covered by subsection (2), remains in force until it is cancelled.

39F Renewal of certain licences

- (1) The Collector may, by writing, renew a licence to which subsection 39E(2) applies on the written application of the licence holder.
- (2) Where a licence is renewed, the Collector may specify conditions different from those specified in the original licence.
- (3) The Collector may refuse to renew the licence if the Collector is satisfied that, if the licence were renewed, he or she would be entitled to cancel the licence.

Automatic extension of licence

- (4) If the Collector has not decided an application for renewal of a licence before the end of the expiry day, the licence continues in force until the Collector decides the application.

Period of renewal

- (5) If the Collector renews a licence, it is renewed for a period of 3 years, unless cancelled earlier, starting on the day after the expiry day.

Example: A licence is due to expire on 30 September 2008 (the expiry day). On 1 September 2008 the licence holder applies to renew the licence. The Collector has not decided the application by the end of 30 September 2008.

The licence continues in force automatically past 30 September 2008 until the Collector decides the application.

On 15 October 2008 the Collector decides to renew the licence. The 3 year period of renewal starts on 1 October 2008.

Licence may be renewed more than once

- (6) A licence may be renewed more than once under this section.

Definition

- (7) In this section:

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expiry day, in relation to a licence, means the 30 September on which the licence is due to expire under paragraph 39E(3)(a) or (b).

Division 3A—Variation of licences to include additional premises

39FA Application for variation

- (1) The holder of:
 - (a) a storage licence; or
 - (b) a manufacturer licence that does not authorise the manufacture of tobacco goods;may apply to the Collector to vary the licence to cover additional premises.
- (2) The application must:
 - (a) be in a form (if any) approved by the CEO; and
 - (b) set out the name and address of the licence holder; and
 - (c) identify the licence to be varied; and
 - (d) for each additional premises that is covered by one or more other licences held by the licence holder—identify the other licences; and
 - (e) for each additional premises that is not covered by another licence held by the licence holder:
 - (i) set out the name and address of each person whom the Collector is required to consider for the purposes of paragraph 39A(2A)(a); and
 - (ii) contain a description of the premises; and
 - (iii) set out such particulars of the matters that the Collector is required to consider in relation to premises for the purposes of sections 39A, 39B and 39C as will enable the Collector adequately to consider those matters; and
 - (f) contain such other information as is prescribed.

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39FB Variation of licence

- (1) The Collector may, on application by the licence holder under section 39FA, by written notice, vary a licence to cover additional premises.
- (2) If:
 - (a) a licence (the *first licence*) covers particular premises; and
 - (b) the Collector varies another licence held by the same licence holder to cover the premises;the Collector must, by written notice given to the licence holder:
 - (c) unless paragraph (d) applies—vary the first licence to no longer cover the premises; or
 - (d) if the effect of varying the first licence as mentioned in paragraph (c) would be that no premises are covered by the licence—cancel the first licence.

Division 4—Suspension and cancellation of licences

39G When the Collector may suspend a licence

- (1) Subject to subsection (2), the Collector may suspend a licence if the Collector has reasonable grounds for believing that:
- (a) where the licence holder is a natural person—that person is not a fit and proper person; or
 - (b) where the licence holder is a partnership—any of the partners is not a fit and proper person; or
 - (c) where the licence holder is a company—a director, officer or shareholder of the company who participates in the management or control of the company is not a fit and proper person; or
 - (e) where the licence holder is a company—the company is not a fit and proper company; or
 - (f) the licence holder is an associate (within the meaning of the *Income Tax Assessment Act 1997*) of a person who is not:
 - (i) a fit and proper person; or
 - (ii) a fit and proper company; or
 - (fa) if the licence holder is a natural person—he or she does not have, and he or she does not have available to him or her, the skills and experience to carry out the activity that is authorised by the licence; or
 - (fb) if the licence holder is a company—the company does not have available to it the skills and experience to carry out the activity that is authorised by the licence; or
 - (h) in relation to a producer licence or dealer licence—the physical security of the storage place on the premises covered by the licence is no longer adequate having regard to:
 - (i) the nature of the storage place; or
 - (ii) the quantity of tobacco leaf kept in the storage place; or
 - (iii) the procedures and methods adopted to ensure the security of tobacco leaf at the storage place; or

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- (ia) the licence holder does not have a market for goods of a kind the licence relates to; or
 - (j) the licence holder is not keeping proper books of account or records to enable the CEO adequately to audit those books or records; or
 - (k) a condition of the licence, other than a condition that relates only to particular premises, has been breached; or
 - (l) the licence holder has made a statement to the Collector that is false or misleading; or
 - (m) it is necessary for the protection of the revenue to suspend the licence; or
 - (ma) in relation to a manufacturer licence that permits the manufacture of any tobacco goods—the licence holder has failed to comply with a requirement to provide security under section 16 in relation to that licence; or
 - (n) in relation to a manufacturer licence or storage licence—it is necessary for the purpose of ensuring compliance with the Excise Acts to suspend the licence; or
 - (o) the licence holder has not, for a period of at least 3 years, conducted any activities authorised by the licence at any premises covered by the licence; or
 - (p) one or more of the following matters exist for each premises covered by the licence:
 - (i) a matter mentioned in paragraph (1A)(a), (d) or (e);
 - (ii) for a manufacturer licence or storage licence—a matter mentioned in paragraph (1A)(b) or (c);whether or not the one or more matters existing for particular premises are the same for each premises.
- (1A) If the licence covers more than one premises, the Collector may suspend a licence in relation to particular premises if the Collector has reasonable grounds for believing that:
- (a) a natural person who participates in the management or control of the premises is not a fit and proper person; or

- (b) for a manufacturer licence or storage licence—the physical security of the premises is no longer adequate having regard to:
 - (i) the nature of the premises; or
 - (ii) the kinds and quantity of goods kept at the premises; or
 - (iii) the procedures and methods adopted to ensure the security of goods at the premises; or
 - (c) for a manufacturer licence or storage licence—the plant and equipment used at the premises covered by the licence are such that the protection of the revenue in relation to goods at the premises is inadequate; or
 - (d) in any case—the licence holder has not, for a period of at least 3 years, conducted any activities authorised by the licence at the premises; or
 - (e) in any case—a condition of the licence relating to the premises has been breached.
- (2) If the licence is a producer licence or dealer licence, the Collector must not suspend the licence under paragraph (1)(a), (b), (c), (d) or (f) unless the Collector is satisfied that it is necessary to suspend the licence to protect the revenue.

39H Determining whether a natural person is fit and proper

The Collector may, in considering whether a natural person is a fit and proper person for the purposes of paragraphs 39G(1)(a), (b), (c) and (f) and (1A)(a), have regard to:

- (a) whether, within one year before the day of the Collector's consideration, the person has been charged with an offence of the kind referred to in paragraph 39B(a); and
- (b) whether, within 10 years before the day of the Collector's consideration, the person has been convicted of an offence of the kind referred to in paragraph 39B(b); and
- (ba) the extent of the person's compliance, within 4 years before the day of the Collector's consideration, with any law administered by the CEO; and
- (bb) the person's financial resources; and

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- (c) whether the person is an undischarged bankrupt; and
- (d) whether, within 10 years before the day of the Collector's consideration, the person has:
 - (i) held another licence which has been cancelled; or
 - (ia) held a licence that has been varied to no longer cover one or more premises; or
 - (ii) has participated in the management or control of a company that has had its licence cancelled; or
 - (iii) participated in the management or control of a company that has had its licence varied to no longer cover one or more premises.

39I Determining whether a company is fit and proper

The Collector may, in considering whether a company is a fit and proper company for the purposes of paragraphs 39G(1)(e) and (f), have regard to:

- (a) whether, within one year before the day of the Collector's consideration, the company has been charged with an offence of the kind referred to in paragraph 39C(a); and
- (b) whether, within 10 years before the day of the Collector's consideration, the company is convicted of an offence of the kind referred to in paragraph 39C(b); and
- (ba) the extent of the company's compliance, within 4 years before the day of the Collector's consideration, with any law administered by the CEO; and
- (bb) the company's financial resources; and
- (c) the matters referred to in paragraphs 39C(d) to (h).

39J Method of suspension

- (1) If the Collector decides to suspend a licence relying on subsection 39G(1) or (1A), the Collector must give a written notice in accordance with this section to the licence holder.
- (2) The notice must be:
 - (a) served, either personally or by post, on the licence holder; or

- (b) served personally on a person who, at the time of service, apparently participates in the management or control of any of the premises covered by the licence.
- (3) A notice given under subsection (1) relating to a suspension relying on subsection 39G(1):
 - (a) must state that, if the licence holder wishes to prevent the cancellation of the licence, he or she may, within 7 days after the day on which the notice was served, give to the Collector at an address specified in the notice a written statement showing cause why the licence should not be cancelled; and
 - (b) may, if it appears to the Collector to be necessary for the protection of the revenue or for ensuring compliance with the Excise Acts, state that the licence is suspended.
- (4) If the notice states that the licence is suspended, then the licence is suspended on and from the service of the notice.
- (4A) A notice given under subsection (1) relating to a suspension relying on subsection 39G(1A):
 - (a) must state that, if the licence holder wants the licence to continue to cover the premises to which the suspension relates, the licence holder may, within 7 days after the day on which the notice was served, give to the Collector at an address specified in the notice a written statement showing cause why the premises should continue to be covered by the licence; and
 - (b) may, if it appears to the Collector to be necessary for the protection of the revenue or for ensuring compliance with the Excise Acts, state that the licence is suspended in relation to the premises.
- (4B) If the notice states that the licence is suspended in relation to particular premises, then the licence is suspended in relation to the premises on and from the service of the notice.
- (5) The Collector may revoke a suspension at any time.

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- (6) The Collector must revoke a suspension made relying on subsection 39G(1) if the licence has not been cancelled within 28 days after the day the Collector suspended the licence.
- (7) The Collector must revoke a suspension made relying on subsection 39G(1A) if, within 28 days after the day the Collector made the suspension, the licence has not been varied to no longer cover the premises to which the suspension relates.

39K Activities that are prohibited during suspension

- (1) During a period in which a licence is suspended relying on subsection 39G(1), the licence holder must not, without permission under subsection (6) of this section:
 - (a) for a manufacturer licence—intentionally manufacture goods that are excisable goods knowing, or being reckless as to whether, they are excisable goods; and
 - (b) for a manufacturer licence or a storage licence—intentionally keep or store excisable goods at any of the premises covered by the licence knowing, or being reckless as to whether, they are excisable goods.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
- (b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (1A) During a period in which a licence is suspended relying on subsection 39G(1A), the licence holder must not, without permission under subsection (6) of this section, at premises in relation to which the licence is suspended:
 - (a) for a manufacturer licence—intentionally manufacture goods that are excisable goods knowing, or being reckless as to whether, they are excisable goods; or

- (b) for a manufacturer licence or a storage licence—intentionally keep or store excisable goods knowing, or being reckless as to whether, they are excisable goods.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
 - (b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.
- (2) During a period in which a licence is suspended, the licence holder must not, without permission under subsection (6):
- (a) for a producer licence—intentionally produce material that is tobacco seed, tobacco plant or tobacco leaf knowing, or being reckless as to whether, it is tobacco seed, tobacco plant or tobacco leaf; and
 - (b) for a dealer licence—intentionally deal in material that is tobacco seed, tobacco plant or tobacco leaf knowing, or being reckless as to whether, it is tobacco seed, tobacco plant or tobacco leaf.

Penalty:

- (a) for tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
- (b) for tobacco leaf—2 years imprisonment or the greater of:
 - (i) 500 penalty units; and
 - (ii) 5 times the amount of duty, worked out under the regulations, being the duty that would be payable if the tobacco leaf had been manufactured into excisable goods and entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (3) During a period in which a manufacturer licence, producer licence or dealer licence is suspended, the licence holder must not, without permission under subsection (6), intentionally keep or store

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tobacco leaf knowing, or being reckless as to whether, it is tobacco leaf.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
- (b) 5 times the amount of duty, worked out under the regulations, being the duty that would be payable if the tobacco leaf had been manufactured into excisable goods and entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

(4) During a period in which a licence is suspended relying on subsection 39G(1), the licence holder must not, without permission under subsection (6) of this section:

- (a) for a manufacturer licence—manufacture excisable goods; and
- (b) for a manufacturer licence or storage licence—keep or store excisable goods at any premises covered by the licence; and
- (c) for a producer licence—produce tobacco seed, tobacco plant or tobacco leaf; and
- (d) for a dealer licence—deal in tobacco seed, tobacco plant or tobacco leaf; and
- (e) for a manufacturer licence, storage licence, producer licence or dealer licence—keep or store tobacco leaf.

Penalty: 100 penalty units.

(4A) During a period in which a licence is suspended relying on subsection 39G(1A), the licence holder must not, without permission under subsection (6) of this section, at premises in relation to which the licence is suspended:

- (a) for a manufacturer licence—manufacture excisable goods; or
- (b) for a manufacturer licence or storage licence—keep or store excisable goods.

Penalty: 100 penalty units.

- (5) Strict liability applies to subsections (4) and (4A).
- (6) During a period in which a licence is suspended relying on subsection 39G(1) or (1A), the Collector may:
- (a) give written permission for goods to be kept or stored at any of the premises covered by the licence; and
 - (b) give written permission for a process to be carried out at any of the premises covered by the licence; and
 - (c) give written permission for the movement of goods from any of the premises covered by the licence to another place; and
 - (d) if the licence is suspended relying on subsection 39G(1):
 - (i) by written notice to the owner of goods at premises covered by the licence, require the owner to remove the goods to another place approved by the Collector; and
 - (ii) take such control of premises covered by the licence, and of any goods at those premises, as may be necessary for the protection of the revenue or for ensuring compliance with the Excise Acts; and
 - (e) if the licence is suspended relying on subsection 39G(1A):
 - (i) by written notice to the owner of goods at premises in relation to which the licence is suspended, require the owner to remove the goods to another place approved by the Collector; and
 - (ii) take such control of premises in relation to which the licence is suspended, and of any goods at those premises, as may be necessary for the protection of the revenue or for ensuring compliance with the Excise Acts; and
 - (f) by written notice to the licence holder, require the holder to pay such costs incurred by the CEO as a result of the suspension.
- (7) If an amount that the licence holder is required to pay in accordance with a notice under paragraph (6)(f) is not paid, that amount may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

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39L Cancellation of licences

- (1) The Collector may cancel a licence if:
 - (a) the Collector is entitled to suspend the licence relying on subsection 39G(1); or
 - (b) but for subsection 39LA(3), the Collector could vary the licence under subsection 39LA(1) or would be required to vary the licence under subsection 39LA(2).
- (2) The Collector must cancel a licence if the Collector:
 - (a) receives a written notice from the licence holder requesting the Collector to cancel the licence; and
 - (b) is satisfied that the licence holder has no tobacco seed, tobacco plant, tobacco leaf or excisable goods in his or her possession, custody or control.
- (3) The Collector must cancel a licence under subsection (1) or (2) by written notice:
 - (a) served, either personally or by post, on the licence holder; or
 - (b) served personally on a person who, at the time of service, apparently participates in the management or control of any of the premises covered by the licence.
- (4) If the Collector cancels the licence, the Collector must by written notice inform the owner of excisable goods at any of the premises covered by the licence:
 - (a) that the owner is required, within a time specified in the notice or any further time allowed by the Collector, to:
 - (i) pay to the Collector duty payable in respect of the goods at the premises; or
 - (ii) remove the goods at the premises to another place in accordance with permission obtained from the Collector; and
 - (b) that, if the owner does not comply with the requirements of the notice, the goods will be sold or otherwise disposed of.
- (5) The notice under subsection (4) must be:

- (a) served, either personally or by post, on the owner of the goods; or
 - (b) served personally on a person who, at the time of the cancellation of the licence, apparently participated in the management or control of any of the premises covered by the licence.
- (6) If the owner of goods to which a notice under subsection (4) applies fails to comply with the requirements of the notice within the time specified in the notice or any further time allowed by the Collector, the Collector may sell, or otherwise dispose of, the goods.
- (7) If the licence of a person is cancelled, the person must surrender the licence to the Collector if requested by the Collector to do so.
- Penalty: 1 penalty unit.
- (8) Strict liability applies to subsection (7).

39LA Variation of certain licences to remove premises

- (1) Subject to subsection (3), the Collector may vary a licence to no longer cover particular premises if:
- (a) the licence covers more than one premises; and
 - (b) the Collector is entitled to suspend the licence in relation to the premises relying on subsection 39G(1A).
- (2) Subject to subsection (3), the Collector must vary a licence to no longer cover particular premises if:
- (a) the licence covers more than one premises; and
 - (b) the Collector receives written notice from the licence holder requesting the variation.
- (3) The Collector must not vary a licence under subsection (1) or (2) if the effect of varying the licence would be:
- (a) for a manufacturer licence—that there are no factories covered by the licence; or

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- (b) for a storage licence—that there are no premises covered by the licence.
- (4) The Collector must vary a licence under subsection (1) or (2) by written notice:
 - (a) served, either personally or by post, on the licence holder; or
 - (b) served personally on a person who, at the time of service, apparently participates in the management or control of premises covered by the licence.
- (5) If the Collector varies the licence under subsection (1), the Collector must, by written notice, inform an owner of excisable goods at the premises that will no longer be covered by the licence:
 - (a) that the owner is required, within a time specified in the notice or any further time allowed by the Collector, to:
 - (i) pay to the Collector duty payable in respect of the goods at the premises; or
 - (ii) remove the goods at the premises to another place in accordance with permission obtained from the Collector; and
 - (b) that, if the owner does not comply with the requirements of the notice, the goods will be sold or otherwise disposed of.
- (6) The notice under subsection (5) must be:
 - (a) served, either personally or by post, on the owner of the goods; or
 - (b) served personally on a person who, at the time of the variation of the licence, apparently participated in the management or control of the premises.
- (7) If the owner of goods in relation to which a notice under subsection (5) is served fails to comply with the requirements of the notice within the time specified in the notice or any further time allowed by the Collector, the Collector may sell, or otherwise dispose of, the goods.

Division 5—Dealing with goods after cancellation etc.

39M Removal of goods if licence ceases to be in force or is varied

Fault-based offences

- (1) If a licence ceases to be in force, a person must not, without permission, intentionally remove from any of the premises that were covered by the licence any excisable goods on which duty has not been paid knowing, or being reckless as to whether, the goods are excisable goods on which duty has not been paid.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
 - (b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.
- (2) If a licence is varied to no longer cover particular premises, a person must not, without permission, intentionally remove from the premises any excisable goods on which duty has not been paid, knowing, or being reckless as to whether, the goods are excisable goods on which duty has not been paid.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
- (b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.

Strict liability offences

- (3) If a licence ceases to be in force, a person must not, without permission, remove from any of the premises that were covered by the licence:
- (a) any excisable goods the duty on which has not been paid; or
 - (b) any tobacco seed, tobacco plant or tobacco leaf.

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Penalty: 100 penalty units.

- (3A) If a licence is varied to no longer cover particular premises, a person must not, without permission, remove from the premises any excisable goods on which duty has not been paid.

Penalty: 100 penalty units.

- (4) Strict liability applies to subsections (3) and (3A).

39N Removal of goods by Collector if licence ceases to be in force or is varied

- (1) If a licence ceases to be in force, the Collector may cause:
- (a) any excisable goods on which duty has not been paid that are at any of the premises that were covered by the licence; and
 - (b) any packages in which the goods are contained;
- to be removed to such other place as the Collector thinks fit.

- (1A) If a licence is varied to no longer cover particular premises, the Collector may cause:
- (a) any excisable goods on which duty has not been paid that are at the premises; and
 - (b) any packages in which the goods are contained;
- to be removed to such other place as the Collector thinks fit.

- (2) The Collector may sell or otherwise dispose of goods if after 6 months after removing the goods under subsection (1) or (1A):
- (a) they are not claimed, in writing, by their owner; or
 - (b) the duty, expenses of removal, storage rent and other storage charges (if any) on or in respect of them have not been paid.

- (3) The duty to be paid on the excisable goods claimed under subsection (2) is to be calculated at the rate in force at the time when the duty is paid.

- (4) This section does not apply to licences to which section 77E applies.

Division 6—Miscellaneous

39O Death of licence holder

If a licence holder dies, the licence is taken to be transferred to the person's legal personal representative. However, the licence is taken to be automatically cancelled at the end of the 3 months after the day on which the person dies.

39P Service of notices

For the purpose of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a notice under this Part on a person who holds or held a licence, such a notice posted as a letter addressed to the person at the address of any of the premises that are or were covered by the licence is taken to be properly addressed.

39Q Review of decisions

A person or partnership who is dissatisfied with a decision of the Collector under this Part may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

39R Spent convictions scheme

Nothing in this Part affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that relieve persons in certain circumstances from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

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40 Excise and Excise-Equivalent Warehouse Licences Register

Establishing and maintaining the register

- (1) The CEO must establish and maintain a register, to be known as the Excise and Excise-Equivalent Warehouse Licences Register, that includes the information mentioned in subsection (2) about licences of any of the following kinds that are in force:
 - (a) storage licences granted under subsection 39A(1) of this Act;
 - (b) manufacturer licences granted under subsection 39A(1) of this Act, other than manufacturer licences that allow for the manufacture of tobacco goods;
 - (c) warehouse licences granted under section 79 of the *Customs Act 1901* that are excise-equivalent warehouse licences for the purposes of Part V of that Act.
- (2) The information that must be included is as follows:
 - (a) the name of the licence holder;
 - (b) if the licence holder has an Australian Business Number—the Australian Business Number;
 - (c) the name of the Act under which the licence was granted;
 - (d) any additional information that is prescribed by the regulations for the purposes of this paragraph.

Updating the register

- (3) If:
 - (a) the CEO is satisfied that information included in the register is incorrect; and
 - (b) the CEO has access to information that the CEO believes to be correct;the CEO may adjust the information on the register accordingly.

Register to be publicly available

- (4) The CEO must ensure that the register is made publicly available on a website maintained by the Australian Taxation Office.

Register is not a legislative instrument

- (5) The register is not a legislative instrument.

Admissibility of information on the register

- (6) The CEO may issue a document containing the details of a matter taken from the register.
- (7) A document issued under subsection (6) is admissible in any proceedings as prima facie evidence of the matter.
- (8) Subsections (6) and (7) do not limit the manner in which evidence may be adduced, or the admissibility of evidence, under the *Evidence Act 1995*.

Part IVA—Control of tobacco seed, plant and leaf

44 Permission to move tobacco seed, tobacco plant and tobacco leaf

- (1) The Collector may give written permission to a person specified in the permission to move tobacco seed, tobacco plant or tobacco leaf from a place specified in the permission to another place so specified.
- (2) It is a condition of a permission to move tobacco leaf that a tobacco bale label must be affixed to the tobacco leaf at all times when the tobacco leaf is not at premises covered by a manufacturer licence, producer licence or dealer licence, unless the Collector has given additional written permission that it need not have a tobacco bale label.
- (3) Permission under subsection (1) or (2) may be given subject to the condition that the person to whom the permission is given complies with such conditions as are specified in the permission, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Excise Acts.
- (4) A person to whom permission has been given under this section must not intentionally act or fail to act knowing, or being reckless as to whether, the act or omission contravenes a condition under subsection (2) or specified in the permission under subsection (3).

Penalty:

- (a) if the permission relates to tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
- (b) if the permission relates to tobacco leaf—2 years imprisonment or the greater of:
 - (i) 500 penalty units; and
 - (ii) 5 times the amount of duty worked out under the regulations, being the duty that would be payable if the

tobacco leaf had been manufactured into excisable goods and entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (5) A person must not fail to comply with a condition under subsection (2) or specified in the permission under subsection (3).

Penalty: 100 penalty units.

- (6) Strict liability applies to subsection (5).

- (7) If, before the tobacco seed, tobacco plant or tobacco leaf was moved, a person to whom permission has been given under this section intentionally acts or fails to act knowing, or being reckless as to whether, the act or omission contravenes a condition specified in the permission, then, for the purposes of paragraph 116(1)(ba), the movement of the seed, plant or leaf is taken to have been moved without permission under section 44.

- (8) A person commits an offence if:

- (a) the person has permission under this section to deliver tobacco seed, tobacco plant or tobacco leaf for export; and
- (b) the seed, plant or leaf is not exported within 30 days after the day of delivery (or, if the permission specifies a shorter or longer period, that shorter or longer period); and
- (c) the person fails to return the seed, plant or leaf to the place specified in a permission for the return of the goods within 5 days after the end of the 30 day period (or, if the permission mentioned in paragraph (a) specified a shorter or longer period, after the end of that shorter or longer period).

Penalty:

- (a) if the permission relates to tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
- (b) if the permission relates to tobacco leaf—2 years imprisonment or the greater of:
 - (i) 500 penalty units; and

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- (ii) 5 times the amount of duty worked out under the regulations, being the duty that would be payable if the tobacco leaf had been manufactured into excisable goods and entered for home consumption on the penalty day.
- (9) Subsection (8) does not apply if the goods were destroyed before the end of the 30 day period (or if the permission specified a shorter or longer period, that shorter or longer period).

Note: The defendant bears an evidential burden in relation to the matters in subsection (9). See subsection 13.3(3) of the *Criminal Code*.

Part V—Excise supervision, manufacturers' books, and regulation of factories generally

46 Supervision by officers

The manufacture of excisable goods shall for the protection of the revenue be subject to the right of supervision by officers.

49 Facilities to officers

Every licensed manufacturer shall provide all reasonable facilities for enabling officers to exercise their powers under this Act.

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

50 Record keeping

- (1) A licensed manufacturer, licensed producer and licensed dealer, and a proprietor of an approved place, shall:
 - (a) keep such records, and furnish to the CEO such returns, as the CEO directs;
 - (b) retain any records so kept for such period as the CEO directs; and
 - (c) on demand by an officer, produce the records to the officer.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (1A) Strict liability applies to subsection (1).
- (2) An officer may inspect and take copies of, or extracts from, any records kept in pursuance of subsection (1).

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51 Collector may give directions

- (1) The Collector may give directions in writing to any licensed manufacturer directing:
- (a) in what parts of a factory covered by the licence any process in the manufacture is to be carried on.
 - (b) in what parts of a factory covered by the licence material and other matters used in the manufacture and excisable goods manufactured are respectively to be kept.

And every licensed manufacturer must comply with such directions.

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

52 Weights and scales

Every licensed manufacturer must at the manufacturer's own expense provide sufficient lights, correct weights and scales, and all labour necessary for weighing material received into and all excisable goods manufactured in a factory covered by the licence, and for taking stock of all material and excisable goods contained in such a factory.

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

53 Responsibility of manufacturers

Every licensed manufacturer is responsible for the safe custody of all tobacco leaf and excisable goods in a factory covered by the licence and for the observance of this Act within such a factory.

Part VI—Payment of duty, removal of excisable goods from factories, and excise control

54 Liability to pay duty

- (1) The licensed manufacturer of excisable goods, or, where the owner of excisable goods enters them for home consumption, the owner of the goods, shall pay to the Collector, in accordance with this Act, the Excise duty on those goods.

Note: For provisions about collection and recovery of the duty, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) If the manufacture of beer involves, in whole or in part, the provision to the public at particular premises of commercial facilities and equipment for use in the production of beer at those premises, then, despite subsection (1), only the person who provides those facilities and equipment at those premises is liable to pay excise duty on the beer.

- (3) If excisable goods are delivered to a relevant traveller (within the meaning of section 61E) under a permission under that section, then, despite subsection (1) of this section, the relevant traveller (and no-one else) is liable to pay excise duty on the goods.

- (4) To avoid doubt, if the excisable goods are tobacco goods, only the licensed manufacturer of the goods is liable to pay Excise duty on the goods.

Note: Under subsection 66(7), tobacco goods are taken to be entered, and delivered, for home consumption at the time they are manufactured.

54A Liability of Commonwealth authorities to pay Excise duty

- (1) Subject to subsection (2), to the extent that, but for this section, an Act (whether enacted before, on or after 1 July 1989) would:
- (a) exempt a particular Commonwealth authority from liability to pay Excise duty; or

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(b) exempt a person from liability to pay Excise duty in relation to goods for use by a particular Commonwealth authority; then, by force of this section, the exemption has no effect.

(2) Subsection (1) does not apply to an exemption if:

- (a) the provision containing the exemption is enacted after 30 June 1989; and
- (b) the exemption expressly refers to Excise duty (however described).

55 Transfer of partly made goods

Partly manufactured excisable goods may by authority be transferred from one factory to another for the purpose of completing the manufacture.

58 Entry for home consumption etc.

(1) Subject to subsections (2) and (4), entries may be made by the licensed manufacturer or owner and passed by an officer and may authorize the removal of excisable goods for:

- (a) Home consumption.
- (b) Removal to an approved place that is an approved place in relation to goods of all kinds or in relation to goods of the kind that are to be entered.

(1A) An entry in subsection (1):

- (a) shall be made in accordance with an approved form, or in a manner approved by the CEO;
- (b) shall contain such information as is required by the CEO;
- (c) shall be signed or authorised in a manner required by the CEO; and
- (d) shall be lodged with, or transmitted to, the CEO.

(1B) Where it is intended to export excisable goods, the exportation of those goods must be dealt with under Part VI of the *Customs Act 1901*, but the granting of an authority to deal with those goods

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under section 114C of that Act does not affect the CEO's control over those goods in accordance with section 61 of this Act.

- (2) Subject to subsection (3), excisable goods that are stabilised crude petroleum oil or condensate must not be entered for exportation under the *Customs Act 1901* unless and until the goods:
 - (a) have been entered for home consumption under this Act; or
 - (b) are treated, under section 61C, as if they had been so entered.
- (3) Subsection (2) does not apply to excisable goods that are stabilised crude petroleum oil, or condensate, obtained from prescribed petroleum, within the meaning of section 5B of the *Excise Tariff Act 1921*, produced from a Resource Rent Tax area as defined in that Act.
- (4) Excisable goods that are spirit or other excisable beverage must not be entered for home consumption unless:
 - (a) the spirit or other excisable beverage has been repackaged in containers other than bulk containers; or
 - (b) the spirit or other excisable beverage is entered for home consumption for a purpose for which a free rate of duty applies; or
 - (c) the CEO, by notice in writing, permits the spirit or other excisable beverage to be entered for home consumption packaged in bulk containers.
- (5) The CEO must not permit excisable goods that are spirit or other excisable beverage to be entered for home consumption packaged in bulk containers unless:
 - (a) the containers have a capacity of not more than 20 litres or such other volume as the CEO approves in writing; and
 - (b) the CEO is satisfied that the spirit or other excisable beverage will not, for the purposes of retail sale, be repackaged in any other container.

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- (6) In subsections (4) and (5):

other excisable beverage means goods covered by item 2 of the Schedule to the *Excise Tariff Act 1921*.

59 Payment of duty

Subject to sections 59A and 59AA, the excise duty on excisable goods must be paid at the rate in force:

- (a) when the goods are delivered into home consumption under subsection 61C(2) or 66(7); or
 - (b) when payment is made;
- whichever is the earlier.

59A Declared period quotas—effect on rates of Excise duty

- (1) If at any time the CEO is of the opinion that, for the reason that persons are anticipating, or may anticipate, an increase in the rate of duty applicable to goods of a particular kind, the quantity of goods of that kind that may be entered for home consumption during a period is likely to be greater than it would otherwise be, the CEO may, by notice published in the *Gazette*, declare that that period is, for the purposes of this section, a declared period with respect to goods of that kind.
- (2) The CEO shall, in a notice under subsection (1) declaring that a period is a declared period for the purposes of this section, specify in the notice another period, being a period ending before the commencement of the declared period, as the base period in relation to the declared period.
- (3) Where the CEO makes a declaration under subsection (1) specifying a declared period in respect of goods of any kind, he or she may, in respect of that kind of goods, or goods of a kind included in that kind of goods, make an order in writing (in this Act referred to as a *quota order*) applicable to a person specified in the order, being an order that states that the person's quota, for the declared period, in respect of goods of the kind to which the order

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relates is such quantity as is specified in the order or is nil, and, subject to subsection (4) and subsection 61C(6), the order comes into force forthwith.

- (4) Where, during a declared period, a person enters goods for home consumption, being goods of a kind in respect of which there is no quota order in force that is applicable to that person for the declared period, the CEO may, before the entry is passed and whether or not the declared period has expired, make, under subsection (3), a quota order that is applicable to that person for that declared period in respect of goods of that kind, and a quota order so made shall, subject to subsection 61C(6) and unless the contrary intention appears in the order, be deemed to have come into force immediately before the time of entry of the goods.
- (5) In making a quota order under subsection (3), or revoking or varying a quota order under section 59B, with respect to a person, the CEO shall have regard to the quantity of goods (if any) of the kind to which the order relates that, at any time or times during the period that is the base period with respect to the declared period to which the order relates or during any other period that the CEO considers relevant, the person has entered for home consumption, and to such other matters as the CEO considers relevant.
- (6) If:
- (a) at any time during a declared period, a person has entered any goods (in this section referred to as the **relevant goods**) for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that states that the person's quota in respect of goods of that kind is a quantity specified in the order;
 - (b) the quantity of the relevant goods so entered, together with goods (if any) of that kind previously entered for home consumption by the person during the declared period, exceeds the quota; and
 - (c) the amount of Excise duty paid or payable on the relevant goods at the rate of duty in force at the time of entry of the goods is less than the amount of duty applicable to those

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goods in accordance with the rate of duty in force on the day immediately following the last day of the declared period;
the rate of Excise duty payable on the relevant goods, or on so much of the relevant goods as, together with goods (if any) of that kind previously entered for home consumption by the person during the declared period, exceeds the quota, is the rate of duty in force on the day immediately following the last day of the declared period.

(7) If:

- (a) at any time during a declared period, a person has entered any goods for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that states that the person's quota in respect of goods of that kind is nil; and
- (b) the amount of Excise duty paid or payable on those goods at the rate of duty in force at the time of entry of the goods is less than the amount of duty applicable to those goods in accordance with the rate of duty in force on the day immediately following the last day of the declared period;

the rate of Excise duty payable on the goods is the rate of duty in force on the day immediately following the last day of the declared period.

- (8) Where, at any time during a declared period, a person enters any goods for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that is applicable to that person for the declared period, the CEO shall have the right, before the entry is passed, in addition to requiring Excise duty to be paid on the goods at the rate in force at that time of entry of the goods, to require and take, for the protection of the revenue in relation to any additional amount of duty that may become payable on the goods, or on a part of the goods, by virtue of the operation of subsection (6) or (7), security by way of cash deposit of an amount equal to the amount of duty payable on the goods, or on that part of the goods at the rate in force at the time of entry of the goods.

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- (9) For the purposes of this section, a person shall be deemed to have entered goods for home consumption at a particular time (in this section referred to as *time of entry*) if the person entered the goods, or caused the goods to be entered, for home consumption at that time or is, by virtue of subsection 61C(2), deemed to have entered the goods for home consumption at that time.

59AA Payment of duty by relevant travellers

- (1) Excise duty on goods payable by a relevant traveller under subsection 54(3) must be paid at the rate in force at the time the goods are taken by the relevant traveller for reporting to an officer of Customs doing duty in relation to clearance under the *Customs Act 1901* of the personal baggage of the relevant traveller.

- (2) The excise duty is due and payable at that time.

Note: For provisions about collection and recovery of the duty, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

- (3) In this section:

officer of Customs has the same meaning as in section 61E.

relevant traveller has the same meaning as in section 61E.

59B Revocation and variation of quota orders

- (1) The CEO may, by writing under his or her hand, revoke or vary a quota order at any time before:
- (a) the expiration of the declared period to which the quota order relates; or
 - (b) the expiration of the period within which application may be made for the review of the quota order;
- whichever last occurs.
- (2) Where a quota order is revoked by the CEO under this section, the revocation shall be deemed to have taken effect on the day on which the order came into force.

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- (3) The revocation of a quota order under this section does not prevent the making of a further quota order that is applicable to the person to whom the revoked quota order was applicable and that has effect with respect to the declared period in respect of which the revoked quota order had effect, whether or not the kind of goods to which the further quota order relates is the same as the kind of goods to which the revoked quota order related.
- (4) Subject to subsection (5), a variation of a quota order under this section shall, for the purposes of section 59A, be deemed to have had effect on and from the day on which the quota order came into force.
- (5) Where:
 - (a) a quota order applicable to a person states that the person's quota in respect of goods of the kind to which the order relates is a quantity specified in the order; and
 - (b) the CEO varies the order in such a way that the order specifies a lesser quantity or states that the person's quota is nil;the variation has effect on and from the day on which it is made.

59C Service of quota orders etc.

The CEO shall, as soon as practicable after he or she makes a quota order or revokes or varies a quota order, cause a copy of the quota order or of the revocation or variation, as the case may be, to be served on the person to whom the quota order is applicable.

60 Persons to keep excisable goods safely etc.

- (1) Where a person (including a licensed manufacturer) who has, or has been entrusted with, the possession, custody or control of excisable goods which are subject to the CEO's control:
 - (a) fails to keep those goods safely; or

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(b) when so requested by a Collector, does not account for those goods to the satisfaction of a Collector;

the person shall, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the Excise duty which would have been payable on those goods if they had been entered for home consumption on the day on which the Collector made the demand.

Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

(1A) Where:

(a) excisable goods subject to the CEO's control are, by authority of an entry passed under this Act or of a permission given under section 61A, taken from a place for removal to another place;

(b) the goods are not, or part of the goods is not, delivered to that other place; and

(c) when so requested by a Collector, the person who made the entry or to whom the permission was given, as the case may be, does not account for the goods, or for that part of the goods, as the case may be, to the satisfaction of a Collector;

the person shall, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the Excise duty which would have been payable on the goods, or on that part of the goods, as the case may be, if they had been entered for home consumption on the day on which the demand was made.

Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

(1B) Where:

(a) excisable goods subject to the CEO's control are, by authority of a permission given under section 61A, removed to a place other than a warehouse; and

(b) the person to whom the permission was given fails to keep those goods safely or, when so requested by a Collector, does not account for the goods to the satisfaction of a Collector;

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the person shall, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the Excise duty which would have been payable on those goods if they had been entered for home consumption on the day on which the demand was made.

Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

- (1C) If a person (including a licensed manufacturer) has, or has been entrusted with, the possession, custody or control of excisable goods:
- (a) on which duty has not been paid; and
 - (b) that have been delivered for exportation in accordance with a permission under section 61A; and
 - (c) the person:
 - (i) fails to keep those goods safely; or
 - (ii) when requested by a Collector, does not satisfy the Collector that the goods have been exported and does not otherwise account for those goods to the satisfaction of the Collector;

the person must, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the excise duty which would have been payable on those goods if they had been entered for home consumption on the day on which the Collector made the demand.

Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

- (1D) For the purposes of subparagraph (1C)(c)(ii), evidence that the goods were delivered for export does not constitute evidence that goods have been exported.
- (4) This section does not affect the liability of a person arising under or by virtue of:
- (a) any other provision of this Act; or
 - (b) a security given under this Act.

61 Control of excisable goods

- (1) All excisable goods are subject to the CEO's control until delivered for home consumption or for exportation to a place outside Australia, whichever occurs first.
- (2) A person must not, without permission, intentionally move, alter or interfere with excisable goods that are subject to the CEO's control knowing, or being reckless as to whether, the goods are excisable goods that are subject to the CEO's control.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
- (b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (3) A person must not, without permission, move, alter or interfere with excisable goods that are subject to the CEO's control.

Penalty: 100 penalty units.

- (4) Strict liability applies to subsection (3).

61AA Delivery for exportation

- (1) For the purposes of this Act, excisable goods, other than goods delivered to a person under section 61D(2), are not taken to have been delivered for exportation until they are brought into a place that is a prescribed place for the purposes of paragraph 30(1)(d) of the *Customs Act 1901* for export.
- (2) For the purposes of this Act excisable goods delivered to a person under subsection 61D(2) are taken to have been delivered for exportation at the time when they are received by that person.

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61A Permission to remove goods that are subject to CEO's control

Permission to remove goods from and to particular places

- (1) A Collector may give permission in writing to a person specified in the permission to remove goods of a kind specified in the permission that are subject to the CEO's control from a place so specified to another place so specified and, until the permission is revoked, the permission is authority for the person to remove goods of that kind that are subject to the CEO's control accordingly.
- (2) A Collector may give permission in writing to a person specified in the permission to remove goods subject to the CEO's control that are specified in the permission from a place so specified to another place so specified, and the permission is authority for the person to remove those goods accordingly.
- (2AAA) A Collector may give permission in writing to the holder of:
- (a) a storage licence; or
 - (b) a manufacturer licence other than a manufacturer licence authorising the manufacture of any tobacco goods;
- to remove goods that are subject to the CEO's control from premises covered by the licence to any other premises at which goods of the kind being removed are authorised to be kept (whether by that or any other licence).
- (2AAB) A Collector:
- (a) must give permission under subsection (2AAA):
 - (i) on the grant of a licence covered by paragraph (2AAA)(a) or (b) that covers more than one premises; or
 - (ii) for a licence covered by paragraph (2AAA)(a) or (b) that covered only one premises when granted—if the Collector varies the licence to cover more than one premises; and
 - (b) otherwise, may give a permission under that subsection on application by the licence holder.

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- (2AAC) A permission given under subsection (2AAA) has effect subject to any conditions to which the licence that covers the premises from which the goods are removed is subject.
- (2AAD) Until a permission under subsection (2AAA) is revoked, the permission is authority for the licence holder to remove goods subject to the CEO's control accordingly.
- (2AA) Despite any of the preceding subsections, a Collector must not give permission under subsection (1), (2) or (2AAA) in circumstances prescribed by the regulations.

Permission to deliver goods for exportation

- (2A) A Collector may give permission in writing to a person specified in the permission to deliver for exportation goods of a kind specified in the permission that are subject to the CEO's control and, until the permission is revoked, the permission is authority for the person to deliver for exportation goods of that kind that are subject to the CEO's control accordingly.
- (2B) A Collector may give permission in writing to a person specified in the permission to deliver for exportation goods subject to the CEO's control that are specified in the permission, and the permission is authority for the person to deliver those goods accordingly.

Certain permissions may be revoked

- (2C) A Collector may, by written notice given to the licence holder, revoke a permission under subsection (1), (2AAA) or (2A).

Permission may be subject to conditions

- (3) Permission under subsection (1), (2), (2AAA), (2A) or (2B) may be given subject to the condition that the person to whom the permission is given complies with such conditions as are specified in the permission, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Excise Acts.

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Contravening a condition of a permission

- (4) A person to whom permission has been given under this section must not intentionally act or fail to act knowing, or being reckless as to whether, the act or omission contravenes a condition specified in the permission.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
(b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (5) If, before the goods were removed, a person to whom permission has been given under this section intentionally acts or fails to act knowing, or being reckless as to whether, the act or omission contravenes a condition specified in the permission, then, for the purposes of paragraph 116(1)(d), the removal of the goods is taken not to have been authorised by this Act.

- (6) A person must not fail to comply with a condition specified in a permission given under this section.

Penalty: 100 penalty units.

- (7) Strict liability applies to subsection (6).

61B Removal of goods to a warehouse by a Collector

- (1) Where, in accordance with an entry under section 58 or a permission under subsection 61A(1) or (2), goods are removed to a place other than a general warehouse, a Collector may, at any time before the goods cease to be subject to the CEO's control, direct that the goods be moved from that place to a general warehouse specified by him or her and, if default is made in complying with the direction, the Collector may cause the goods to be moved to that warehouse or to any other general warehouse.

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- (2) A Collector has a lien on goods which he or she has caused to be moved to a warehouse under subsection (1) for any expenses incurred by him or her in connexion with their removal to the warehouse and for any warehouse rent and charges incurred in relation to the goods.
- (3) In this section, **general warehouse** means a warehouse that is a general warehouse for the purpose of the *Customs Act 1901*.

61C Permission to deliver certain goods for home consumption without entry

- (1) A person may apply to the Collector for permission to deliver goods (other than tobacco goods) for home consumption without entering them for that purpose:
- (a) in respect of a recurring 7 day period; or
 - (b) in respect of a calendar month if:
 - (ia) the person is a small business entity, or is a person covered by subsection (1AA), (an **eligible business entity**); or
 - (i) the person is included in a class prescribed by the regulations; or
 - (ii) the goods to be delivered for home consumption are of a kind prescribed by the regulations; or
 - (c) in respect of a quarter if:
 - (i) the goods are classified to item 1, 2, 3, 10, 15, 20 or 21 of the Schedule to the *Excise Tariff Act 1921*; and
 - (ii) the person is an eligible business entity.
- (1AA) A person is covered by this subsection if:
- (a) the person is not a small business entity; and
 - (b) the person would be a small business entity if:
 - (i) each reference in Subdivision 328-C (about what is a small business entity) of the *Income Tax Assessment Act 1997* to \$10 million were instead a reference to \$50 million; and

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- (ii) the reference in paragraph 328-110(5)(b) of that Act to a small business entity were instead a reference to a person covered by this subsection.
- (1A) If a person applies in respect of a recurring 7 day period, the person may specify in the application the 7 day period that the person wishes to use.
- (1B) An application must be made in an approved form.
- (1C) The Collector may, on receiving an application under subsection (1) or advice under subsection (8) or (9), by notice in writing:
 - (a) give permission to the person to deliver for home consumption, from a place specified in the permission, goods:
 - (i) of a kind specified in the permission; and
 - (ii) subject to the CEO's control;even though an entry of the goods for home consumption has not been made and passed under this Act; or
 - (b) refuse to give such a permission and set out in the notice the reasons for so refusing.
- (1D) If a permission is to apply in respect of a 7 day period, the notice must specify:
 - (a) the 7 day period for which permission is given; and
 - (b) the first day of the 7 day period from which permission is given.
- (1E) If a permission is to apply in respect of a calendar month, the notice must specify the calendar month from which permission is given.
- (1F) If a permission is to apply in respect of a quarter, the notice must specify the quarter from which permission is given.
- (2) Goods delivered for home consumption by authority of a permission given under subsection (1C) shall, for the purposes of

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this Act, be deemed to be entered for home consumption on the day on which they are so delivered.

- (3) A permission given under subsection (1C) is subject to the following conditions:
- (a) if the person's permission applies in respect of a 7 day period and specifies goods other than gaseous fuel—the condition that, to the extent that the permission relates to goods other than gaseous fuel, the person give the Collector a return, in an approved form, on the first business day following the end of each 7 day period, providing particulars in relation to the goods that have, during the period to which the return relates, been delivered into home consumption under the permission;
 - (b) if the person's permission applies in respect of a 7 day period and specifies gaseous fuel—the condition that, to the extent that the permission relates to gaseous fuel, the person give the Collector a return, in an approved form, on or before the sixth business day following the end of each 7 day period, providing particulars in relation to the gaseous fuel that has, during the period to which the return relates, been delivered into home consumption under the permission;
 - (c) if the person is an eligible business entity and the person's permission applies in respect of a calendar month—the condition that the person give the Collector a return, in an approved form, on or before the 21st day of each calendar month, providing particulars in relation to the goods that have, during the previous calendar month, been delivered into home consumption under the permission;
 - (d) if a person is included in a class mentioned in subparagraph (1)(b)(i) or has permission to deliver for home consumption goods of a kind mentioned in subparagraph (1)(b)(ii) in respect of a calendar month—any condition prescribed by the regulations;

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- (da) if the person is an eligible business entity and the person's permission applies in respect of a quarter—the condition that the person give the Collector a return, in an approved form, on or before:
 - (i) for a quarter ending on 31 March, 30 June or 30 September—the 28th day after the end of the quarter; and
 - (ii) for a quarter ending on 31 December—the 28th day of the February after the end of the quarter;providing particulars in relation to the goods that have, during the quarter, been delivered into home consumption under the permission;
 - (e) if a person ceases to be an eligible business entity—the condition that the person advise the Collector, in writing, of that fact as soon as practicable after ceasing to be an eligible business entity;
 - (f) if a person ceases to be included in a class mentioned in subparagraph (1)(b)(i)—the condition that the person advise the Collector, in writing, of that fact as soon as practicable after ceasing to be included in that class;
 - (g) the condition that, at the time when each return is given to the Collector, the person pay any duty owing at the rate applicable when the goods were delivered into home consumption;
 - (h) any other condition, specified in the permission, that, in the opinion of the Collector, is necessary for the protection of the revenue or for the purpose of ensuring compliance with the Excise Acts.
- (3A) Despite paragraphs (3)(a), (b), (c), (d) and (da), the Collector may determine different conditions for giving the Collector a return if:
- (a) a person does not have any duty liability; or
 - (b) subsection (8) or (9) applies.
- (4) A person to whom permission has been given under this section must not intentionally act or fail to act knowing, or being reckless

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as to whether, the act or omission contravenes a requirement specified in the permission.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
- (b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

(4A) If, before the goods were removed, a person to whom permission has been given under this section intentionally acts or fails to act knowing, or being reckless as to whether, the act or omission contravenes a requirement specified in the permission, then, for the purposes of paragraph 116(1)(d), the removal of the goods is taken not to have been authorised by this Act.

(4B) A person must not fail to comply with a requirement specified in a permission given under this section.

Penalty: 100 penalty units.

(4C) Strict liability applies to subsection (4B).

(5) Subject to subsection (6), a permission given under subsection (1C) does not authorize the delivery of goods in respect of which a quota order under subsection 59A(3) is in force at any time if the CEO would have the right under subsection 59A(8), if the goods were entered for home consumption under section 58 at that time, to take security with respect to the goods for the protection of the revenue.

(6) For the purposes of subsection (5), a quota order, or a variation of a quota order, shall be deemed not to be in force unless it has been served on the person to whom the quota order applies or has otherwise been brought to the notice of that person.

(7) If the Collector is satisfied that a person to whom a permission has been given under subsection (1C) has failed to comply with any

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condition to which the permission is subject, the Collector may, at any time while the permission remains in force, by notice in writing, revoke the permission. The notice must set out the reasons for the revocation.

- (8) If:
- (a) a person is an eligible business entity or included in a class mentioned in subparagraph (1)(b)(i); and
 - (b) the person's permission applies in respect of a calendar month or a quarter; and
 - (c) the person advises the Collector, in writing, that the person ceases to be an eligible business entity or included in a class mentioned in subparagraph (1)(b)(i);
- the Collector must, by notice in writing:
- (d) revoke the permission with effect from a specified day; and
 - (e) give another permission under subsection (1C) in respect of a 7 day period.
- (9) If a person advises the Collector, in writing, that the person wishes to change the period in respect of which their permission applies, the Collector may, by notice in writing:
- (a) revoke the permission with effect from a specified day; and
 - (b) give another permission under subsection (1C) in respect of another period.
- (10) Subsections (7) to (9) do not, by implication, limit the application of subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*.

61D Outwards duty free shops

- (1) In this section:

international flight means a flight, whether direct or indirect, by an aircraft between a place in Australia from which the aircraft takes off and a place outside Australia at which the aircraft lands or is intended to land.

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international voyage means a voyage, whether direct or indirect, by a ship between a place in Australia and a place outside Australia.

outwards duty free shop means a warehouse in respect of which the relevant warehouse licence authorises the sale in the warehouse of goods to relevant travellers.

proprietor, in relation to an outwards duty free shop, means the holder of the warehouse licence that relates to the outwards duty free shop.

relevant traveller means a person:

- (a) who intends to make an international flight, whether as a passenger on, or as a pilot or member of the crew of, an aircraft; or
- (b) who intends to make an international voyage, whether as a passenger on, or as the master or a member of the crew of, a ship.

warehouse licence has the same meaning as it has in the *Customs Act 1901*.

- (2) Subject to the regulations (if any), a Collector may give permission, in accordance with subsection (3), for excisable goods that are specified in the permission, are subject to the CEO's control and are sold to a relevant traveller in an outwards duty free shop that is specified in the permission to be:
- (a) delivered to the relevant traveller personally for exportation by him or her when making the international flight or voyage in relation to which he or she is a relevant traveller; and
 - (b) exported by the relevant traveller when making that flight or voyage without the goods having been entered for exportation;
- and, subject to subsection (13), the permission is authority for such goods to be so delivered and so exported.

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- (3) Permission under subsection (2) is given in accordance with this subsection if it is in writing and is delivered to the proprietor of the outwards duty free shop to which the permission relates.
- (4) Permission under subsection (2) may relate to particular goods, all goods, goods included in a specified class or classes of goods or goods other than goods included in a specified class or classes of goods.
- (5) Without limiting the matters that may be prescribed in regulations referred to in subsection (2), those regulations:
 - (a) may prescribe circumstances in which permission under that subsection may be given;
 - (b) may prescribe matters to be taken into account by a Collector when deciding whether to give permission under that subsection; and
 - (c) may prescribe conditions to which a permission under that subsection is to be subject.
- (6) A Collector may, when giving permission under subsection (2) or at any time while a permission under that subsection is in force, impose conditions to which the permission is to be subject, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Excise Acts and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.
- (7) Without limiting the generality of paragraph (5)(c) or subsection (6), a condition referred to in that paragraph or that subsection to which a permission is to be subject may be:
 - (a) a condition to be complied with by the proprietor of the outwards duty free shop to which the permission relates or by relevant travellers to whom goods to which the permission relates are sold;
 - (b) a condition that the permission only applies to sales to relevant travellers who comply with a prescribed requirement or requirements, which may be, or include, a requirement that relevant travellers produce to the proprietor of the outwards

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- duty free shop to which the permission relates or to an employee or agent of that proprietor a ticket or other document, being a document approved by a Collector for the purposes of this paragraph, showing that the relevant traveller is entitled to make the international flight or voyage in relation to which he or she is a relevant traveller; or
- (c) a condition that the proprietor of the outwards duty free shop to which the permission relates will keep records specified in the regulations and will notify a Collector of all sales made by him or her to which the permission applies.
- (8) A condition imposed in respect of a permission under subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition takes effect when notice, in writing, of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the proprietor of the outwards duty free shop to which it relates, or at such later time (if any) as is specified in the notice, but does not have effect in relation to any goods delivered to a relevant traveller before the notice was served.
- (9) A condition imposed in respect of a permission under paragraph (5)(c) or subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of a condition under subsection (6) may relate to all goods to which the permission relates or to particular goods to which the permission relates and may apply either generally or in particular circumstances.
- (10) A permission under subsection (2) is subject to:
- (a) the condition that the proprietor of the outwards duty free shop to which the permission relates will ensure that relevant travellers to whom goods are delivered in accordance with the permission are aware of any conditions of the permission with which they are required to comply; and
- (b) the condition that that proprietor will provide a Collector with proof, in a prescribed way and within a prescribed time, of the export of goods delivered to a relevant traveller in accordance with the permission.
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- (11) If a person who is required to comply with a condition imposed in respect of a permission under subsection (2) fails to comply with the condition, he or she commits an offence against this Act punishable upon conviction by a penalty not exceeding 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (11A) An offence under subsection (11) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (12) Where the proprietor of an outwards duty free shop to which a permission under subsection (2) relates does not produce the proof required by paragraph (10)(b) that goods delivered by him or her to a relevant traveller in accordance with the permission have been exported by that traveller, the goods shall be deemed to have been entered, and delivered, for home consumption by the proprietor, as owner of the goods, on the day on which the goods were delivered to that traveller.

- (13) A Collector may, in accordance with the regulations, revoke a permission given under subsection (2) in relation to the sale of goods occurring after the revocation.

- (14) Where a Collector makes a decision under subsection (2) refusing to give permission to the proprietor of an outwards duty free shop or under subsection (13) revoking a permission given under subsection (2), the Collector shall cause to be served, either personally or by post, on the proprietor of the shop, a notice in writing setting out the Collector's findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

61E Inwards duty free shops

- (1) In this section:

airport shop goods has the same meaning as in the *Customs Act 1901*.

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international flight means a flight, whether direct or indirect, by an aircraft between a place outside Australia from which the aircraft took off and a place in Australia at which the aircraft landed.

inwards duty free shop means a warehouse in respect of which the relevant warehouse licence authorises the sale in the warehouse of airport shop goods to relevant travellers.

officer of Customs has the same meaning as in the *Customs Act 1901*.

place outside Australia does not include:

- (a) a ship, or an area of waters, outside Australia;
- (b) an installation outside Australia; or
- (c) a reef or an uninhabited island, outside Australia.

proprietor, in relation to an inwards duty free shop, means the holder of the warehouse licence that relates to the inwards duty free shop.

relevant goods means goods that are both:

- (a) excisable goods; and
- (b) airport shop goods.

relevant traveller means a person who:

- (a) has arrived in Australia on an international flight, whether as a passenger on, or as the pilot or a member of the crew of, an aircraft; and
- (b) has not been questioned, for the purposes of the *Customs Act 1901*, by an officer of Customs in respect of goods carried on that flight.

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- (2) Subject to the regulations (if any), a Collector may give permission, in accordance with subsection (3), for relevant goods that are specified in the permission and are sold to a relevant traveller in an inwards duty free shop that is specified in the permission to be:
- (a) delivered to the relevant traveller; and
 - (b) taken by the relevant traveller for reporting to an officer of Customs doing duty in relation to clearance under the *Customs Act 1901* of the personal baggage of the relevant traveller.
- (3) Permission under subsection (2) is given in accordance with this subsection if it is in writing and is delivered to the proprietor of the inwards duty free shop to which the permission relates.
- (4) Without limiting the matters that may be prescribed in regulations referred to in subsection (2), those regulations:
- (a) may prescribe circumstances in which permission under that subsection may be given;
 - (b) may prescribe matters to be taken into account by a Collector when deciding whether to give permission under that subsection; and
 - (c) may prescribe conditions to which a permission under that subsection is to be subject.
- (5) A Collector may, when giving permission under subsection (2) or at any time while a permission under that subsection is in force, impose conditions to which the permission is to be subject, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Excise Acts and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.
- (6) Without limiting the generality of paragraph (4)(c) or subsection (5), a condition referred to in that paragraph or that subsection to which a permission is to be subject may be:
- (a) a condition to be complied with by the proprietor of the inwards duty free shop to which the permission relates or by

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relevant travellers to whom goods to which the permission relates are sold; or

- (b) a condition that the proprietor of the inwards duty free shop to which the permission relates will keep records specified in the regulations.
- (7) A condition imposed in respect of a permission under subsection (5) or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition takes effect when notice, in writing, of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the proprietor of the inwards duty free shop to which it relates, or at such later time (if any) as is specified in the notice, but does not have effect in relation to any goods delivered to a relevant traveller before the notice was served.
- (8) A condition imposed in respect of a permission under paragraph (4)(c) or subsection (5) or a revocation, suspension or variation, or a cancellation of a suspension, of a condition under subsection (5) may relate to all goods to which the permission relates or to particular goods to which the permission relates and may apply either generally or in particular circumstances.
- (9) A permission under subsection (2) is subject to the condition that the proprietor of the inwards duty free shop to which the permission relates will ensure that relevant travellers to whom goods are delivered in accordance with the permission are aware of any conditions of the permission with which they are required to comply.
- (10) If a person who is required to comply with a condition imposed in respect of a permission under subsection (2) fails to comply with the condition, the person commits an offence against this Act punishable upon conviction by a fine not exceeding 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

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(10A) An offence under subsection (10) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(11) A Collector may, in accordance with the regulations, revoke a permission given under subsection (2) in relation to the sale of goods occurring after the revocation.

(12) Where a Collector makes a decision under subsection (2) refusing to give permission to the proprietor of an inwards duty free shop or under subsection (11) revoking a permission given under subsection (2), the Collector shall cause to be served, either personally or by post, on the proprietor of the shop, a notice in writing setting out the Collector's findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

62 Deficiency in duty

Whenever, in relation to any factory, it appears, on taking stock of excisable goods manufactured and material by an officer, that duty has not been paid on the full quantity of excisable goods on which duty ought to have been paid, the licensed manufacturer shall forthwith pay to the Collector the amount of the deficiency unless such deficiency is accounted for to the satisfaction of the Collector.

63 Power to prescribe scales for calculating quantities of excisable goods produced

For the purpose of calculating the full quantity of excisable goods which have been produced in a factory scales may be prescribed showing the quantity of excisable goods which shall be deemed to have been produced from a given quantity of material, and the quantity of fully manufactured excisable goods which shall be deemed to have been produced from a given quantity of partly manufactured excisable goods.

64 Delivery of samples free of duty

Small samples of goods subject to the CEO's control may, with the approval of a Collector, be delivered for home consumption without entry of the samples for home consumption and without payment of duty on the samples.

65 Rules for working out the volume or weight etc. of excisable goods*Making of rules*

- (1) The CEO may, by legislative instrument, determine rules for working out one or more of the following:
 - (a) the volume of excisable goods;
 - (b) the weight of excisable goods;
 - (c) the percentage by volume of alcohol in excisable goods;
 - (d) the energy content of excisable goods.

Note: The rules may make different provision with respect to different matters or different classes of matters (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

- (2) The rules may, for example:
 - (a) specify sampling methods; and
 - (b) permit minor variations between:
 - (i) the nominated or labelled volume of excisable goods and the actual volume of the goods; or
 - (ii) the nominated or labelled weight of excisable goods and the actual weight of the goods; or
 - (iii) the nominated or labelled volume of alcohol in excisable goods and the actual volume of alcohol in the goods;
- so as to provide for unavoidable variations directly attributable to the manufacturing process.

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Application of rules

- (3) The rules apply to excisable goods entered for home consumption on or after the time when the rules commence.

Note: Section 12 of the *Legislation Act 2003* deals with when a legislative instrument commences.

Part VII—Special provisions relating to tobacco**66 Payment of duty relating to tobacco goods**

- (1) If the Collector grants a person a licence under subsection 39A(1) that permits the manufacture of any tobacco goods, the Collector must determine a recurring 7 day period (the *tobacco excise period*) for the licence.
- (2) However, if the licence is granted on a day that is not the first day of the tobacco excise period, the Collector must determine the first tobacco excise period to be the period from that day until the day before the next tobacco excise period starts.
- (3) The tobacco excise period, and any tobacco excise period determined under subsection (2), must be stated in the licence.
- (4) The person must, for each tobacco excise period for the licence that begins before the licence ends or is cancelled, give a tobacco excise return to the Collector which includes:
 - (a) the amount (including a nil amount) of tobacco goods manufactured under the licence during the period; and
 - (b) the amount of the Excise duty payable on those tobacco goods.
- (5) The return must be:
 - (a) in the approved form; and
 - (b) given to the Collector:
 - (i) on the first business day after the tobacco excise period ends; or
 - (ii) if the licence ends or is cancelled during the tobacco excise period—on the first business day after the day the licence ends or is cancelled.
- (6) The Excise duty on the tobacco goods manufactured under the licence during the tobacco excise period is due and payable by the

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person on the same day that the return must be given for that period.

- (7) For the purposes of this Act, the tobacco goods manufactured under the licence during the tobacco excise period are taken to be entered for home consumption, and delivered for home consumption, at the time the goods are manufactured.

67 General interest charge on unpaid duty

If any of the Excise duty remains unpaid after it is due under subsection 66(6), the person liable to pay the duty is liable to pay the general interest charge (within the meaning of the *Taxation Administration Act 1953*) on the unpaid amount of the Excise duty for each day in the period that:

- (a) started at the beginning of the day by which the amount was due to be paid; and
- (b) finishes at the end of the last day, at the end of which, any of the following remains unpaid:
 - (i) the amount;
 - (ii) general interest charge on any of the amount.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

68 Tobacco not manufactured in certain circumstances

No person shall be deemed to manufacture merely because he or she cures tobacco leaf as stripped from the plant so as to convert it into leaf tobacco.

75 Destruction of waste tobacco

Excisable goods consisting of stalks, refuse, clippings or waste arising from the manufacture of tobacco in a factory may, by authority, be removed from the factory for destruction.

76 Limitation of amount of moisture in tobacco

- (1) No licensed manufacturer shall have in his or her factory any manufactured tobacco containing more than 30% of moisture.

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

77 How moisture determined

Any manufactured tobacco which on being dried at a temperature of 100 degrees Celsius is decreased in weight by more than 30% shall be deemed to have contained more than 30% of moisture.

77AA Tobacco leaf stock may be checked

- (1) If a person has or had possession, custody or control of tobacco leaf, a Collector may request, in writing, the person to account for the tobacco leaf.

Payment of duty equivalent

- (2) If the person does not account for the tobacco leaf to the satisfaction of the Collector, the person must, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the duty that would have been payable on the deficient tobacco leaf if:
- (a) it had been manufactured into excisable goods classified to subitem 5.5 of the Schedule to the *Excise Tariff Act 1921*; and
 - (b) it had been entered for home consumption on the day on which the Collector made the demand.

Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

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- (3) In subsection (2):

deficient tobacco leaf means the weight, in kilograms, of the tobacco leaf that has not been accounted for to the satisfaction of the Collector who made the request.

No effect on other liabilities

- (4) This section does not affect the liability of a person arising under or because of:
- (a) any other provision of this Act; or
 - (b) a security given under this Act.

Request or demand not a legislative instrument

- (5) The following are not legislative instruments:
- (a) a request under subsection (1);
 - (b) a demand under subsection (2).

Part VIIA—Special provisions relating to alcoholic beverages

77A Definitions

In this Part:

alcoholic beverage means goods classified to item 1 or 2, or subitem 3.1, 3.2 or 3.10, of the Schedule to the *Excise Tariff Act 1921*.

brewery means a factory in respect of which a person is licensed to manufacture beer.

brewery licence means a licence to manufacture beer.

77D Spoilt beer

Where beer that is unfit for human consumption is sold for manufacturing purposes, it may, with permission, be removed from a brewery, without entry for home consumption and without payment of duty, in containers marked “Spoilt beer”.

77E Removal of beer if licence ceases to be in force or is varied to no longer cover a particular brewery

If particular premises stop being covered by a brewery licence because the licence ceases to be in force or is varied to no longer cover the premises, a person must not, except with permission, remove or cause to be removed from the premises any beer on which duty has not been paid.

Penalty: 50 penalty units.

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77F Disposal of beer by Collector if licence ceases to be in force or is varied

- (1) If, after the expiration of one month after a brewery licence ceases to be in force or is varied to no longer cover a particular brewery, beer on which duty has not been paid remains at a place that is no longer covered by the licence, then the Collector may sell the beer and any containers and packages that contain the beer.
- (2) If, in the opinion of the Collector, any such beer is unsaleable or is unlikely to realize on sale an amount equal to the duty payable on it together with the expenses of its removal, storage and sale, the Collector may destroy it.
- (3) For the purposes of exercising his or her powers under subsection (1) or (2), the Collector may, after the expiration of the period referred to in subsection (1), cause the beer, and any containers and packages in which it is contained, to be removed from the premises referred to in that subsection to such other place as the Collector thinks fit.

77FA Excise duty to be paid according to labelled alcoholic strength of certain beverages

- (1) If:
 - (a) an alcoholic beverage is entered for home consumption; and
 - (b) the percentage by volume of the alcoholic content of the alcoholic beverage indicated on the label of the beverage exceeds the actual percentage by volume of the alcoholic content of the beverage;excise duty is to be charged according to the percentage by volume of alcoholic content indicated on the label.
- (2) If the manufacturer of an alcoholic beverage of a particular kind enters the beverage for home consumption in a labelled form and also in an unlabelled form, then, for the purposes of subsection (1), alcoholic beverage of that kind that is entered for home consumption in an unlabelled form is to be treated as if it had been labelled by the manufacturer as having the same percentage by

volume of alcoholic content as alcoholic beverage of that kind entered for home consumption by the manufacturer in a labelled form.

77FC Repackaged beer

- (1) If:
- (a) beer classified to subitem 1.2, 1.6 or 1.11 of the Schedule to the *Excise Tariff Act 1921* is entered for home consumption; and
 - (b) the beer is repackaged into sealed individual containers:
 - (i) of less than 8 litres; or
 - (ii) of at least 8 litres but not exceeding 48 litres and not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed for the purposes of subitem 1.1, 1.5 or 1.10 of that Schedule (if any);

then, for the purposes of this Act, that repackaging is taken to be the manufacture of beer (subject to subsection (2)).

Note 1: Subitems 1.2, 1.6 and 1.11 of that Schedule set out the rates of duty for beer packaged in individual containers exceeding 48 litres or individual containers, of at least 8 litres but not exceeding 48 litres, and designed to connect to a pressurised gas delivery system, pump delivery system or other prescribed system (if any).

Note 2: Subitems 1.1, 1.5 and 1.10 of that Schedule set out the rates of duty for beer packaged in individual containers of less than 8 litres or individual containers, of at least 8 litres but not exceeding 48 litres, and not designed to connect to a pressurised gas delivery system, pump delivery system or other prescribed system (if any).

- (2) Subsection (1) does not apply in relation to the repackaging of the first 10,000 litres of beer, at particular premises in a financial year, in relation to which the following conditions are satisfied:
- (a) the beer is repackaged into exempt beer containers for the purposes of retail sale;
 - (b) the retail sale occurs immediately after the repackaging of the beer.

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- (3) For the purposes of subsection (2), an *exempt beer container* is a sealed individual container, of no more than 2 litres, that is not pressurised.

Part VIIAA—Special provisions relating to spirits

77FD Spirit for fortifying Australian wine or Australian grape must

Grant of approval

- (1) For the purposes of subitem 3.5 of the Schedule to the *Excise Tariff Act 1921*, the CEO may grant a person a written approval to use spirit for fortifying Australian wine or Australian grape must.
- (2) The approval must be for:
 - (a) the use of a one-off specified quantity of spirit; or
 - (b) the use of a specified quantity of spirit in a calendar month or a calendar year.

Note: See also section 77FH (about payment of duty equivalent if the spirit is not used for the approved purpose).

Conditions

- (3) The CEO must specify in an approval any conditions to which the approval is subject.

Approval not a legislative instrument

- (4) An approval under subsection (1) is not a legislative instrument.

77FE Spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose—class determinations

- (1) The CEO may, by legislative instrument, determine a class of persons for the purposes of subitem 3.6 of the Schedule to the *Excise Tariff Act 1921*.

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- (2) For the purposes of that subitem, the determination may also specify a quantity of spirit that a person included in the class may use in a calendar month or a calendar year.

Note: See also section 77FH (about payment of duty equivalent if spirit is delivered to a person included in such a class and the person does not use the spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose).

77FF Spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose—specific approvals

Grant of approval

- (1) For the purposes of subitem 3.7 of the Schedule to the *Excise Tariff Act 1921*, the CEO may grant a person a written approval to use spirit for a specified industrial, manufacturing, scientific, medical, veterinary or educational purpose.
- (2) The approval must be for:
- (a) the use of a one-off specified quantity of spirit; or
 - (b) the use of a specified quantity of spirit in a calendar month or a calendar year.

Note: See also section 77FH (about payment of duty equivalent if the spirit is not used for the approved purpose).

Conditions

- (3) The CEO must specify in an approval any conditions to which the approval is subject.

Approval not a legislative instrument

- (4) An approval under subsection (1) is not a legislative instrument.

Guidelines

- (5) The CEO must, by legislative instrument, develop guidelines that he or she must have regard to when deciding whether or not to grant an approval under subsection (1).

77FG Denatured spirits

- (1) For the purposes of subitem 3.8 of the Schedule to the *Excise Tariff Act 1921*, the CEO may, by legislative instrument, determine a formula for the denaturing of spirits.
- (2) The CEO must give the greatest weight to the protection of the revenue in determining a formula under subsection (1).

77FH When an amount is payable on spirit covered by section 77FD, 77FE or 77FF

- (1) If spirit classified to subitem 3.5 or 3.7 of the Schedule to the *Excise Tariff Act 1921* is delivered for home consumption, a Collector may request, in writing, the person holding the approval concerned to account to the satisfaction of the Collector that the spirit has been used for the purpose specified in the approval.
- (2) If spirit classified to subitem 3.6 of the Schedule to the *Excise Tariff Act 1921* is:
 - (a) delivered for home consumption; and
 - (b) delivered to a person who is included in a class determined under section 77FE of this Act;a Collector may request, in writing, the person to account to the satisfaction of the Collector that the spirit has been used for an industrial, manufacturing, scientific, medical, veterinary or educational purpose.

Payment of duty equivalent

- (3) If a person does not account as requested under subsection (1) or (2), the person must, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the duty that would have been payable on the spirit if:
 - (a) there had been no approval or determination (as the case requires); and

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- (b) the spirit had been entered for home consumption on the day on which the Collector made the demand.

Note 1: Subitems 3.1, 3.2 and 3.10 of the Schedule to the *Excise Tariff Act 1921* set out the non-free rates of duty for spirit.

Note 2: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

No effect on other liabilities

- (4) This section does not affect the liability of a person arising under or because of:
- (a) any other provision of this Act; or
 - (b) a security given under this Act.

Request or demand not a legislative instrument

- (5) The following are not legislative instruments:
- (a) a request under subsection (1) or (2);
 - (b) a demand under subsection (3).

77FI Delivery from CEO's control of brandy, whisky or rum

- (1) Brandy, whisky or rum manufactured in Australia must not be delivered from the CEO's control unless it has been matured by storage in wood for at least 2 years.
- (2) In this section:

brandy means a spirit distilled from grape wine in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to brandy.

grape wine has the same meaning as in Subdivision 31-A of the *New Tax System (Wine Equalisation Tax) Act 1999*.

rum means a spirit obtained by the distillation of a fermented liquor derived from the products of sugar cane, being distillation carried out in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to rum.

whisky means a spirit obtained by the distillation of a fermented liquor of a mash of cereal grain in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to whisky.

77FJ Person must not abstract denaturing substances in spirit classified to subitem 3.8

- (1) A person commits an offence if:
- (a) spirit classified to subitem 3.8 of the Schedule to the *Excise Tariff Act 1921* is delivered for home consumption; and
 - (b) the person abstracts the whole or a part of a denaturing substance from the spirit; and
 - (c) the person has not been given permission by the CEO to abstract the whole or the part of the denaturing substance.

Penalty: 50 penalty units.

- (2) The CEO may, in writing, give a person permission to abstract the whole or a part of a denaturing substance for the purposes of paragraph (1)(c).
- (3) A permission under subsection (2) is not a legislative instrument.

77FK Offence in relation to stills

- (1) A person commits an offence if:
- (a) the person does any of the following things:
 - (i) makes or commences to make any still;
 - (ii) removes, sets up or erects any still;
 - (iii) sells or otherwise disposes of, or purchases or otherwise acquires any still, either by itself or with other property, or as part of any premises;
 - (iv) imports any still;
 - (v) has possession, custody or control of any still; and
 - (b) the still is of a capacity exceeding 5 litres; and
 - (c) the person is not a licensed manufacturer; and

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(d) the person has not been given permission by the CEO to do the thing.

Penalty: 50 penalty units.

(2) Subsection (1) does not apply to an act done by an officer in the course of performing a function or exercising a power under this Act or the *Excise Tariff Act 1921*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) The CEO may, in writing, give a person permission to do a thing mentioned in paragraph (1)(a).

(4) A permission under subsection (3) is not a legislative instrument.

77FL Offence in relation to describing spirits as “old” or “very old”

(1) A person commits an offence if the person:

(a) does either of the following:

(i) describes any spirit as “old”, or in a way which could reasonably lead to the belief that the spirit has been matured for at least 5 years;

(ii) describes any spirit as “very old”, or in a way which could reasonably lead to the belief that the spirit has been matured for at least 10 years; and

(b) does so in relation to trade or commerce between Australia and another country, between 2 States, between a State and a Territory or between 2 Territories.

Penalty: 10 penalty units.

(2) Subparagraph (1)(a)(i) does not apply if the spirit has been matured by storage in wood for at least 5 years.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subparagraph (1)(a)(ii) does not apply if the spirit has been matured by storage in wood for at least 10 years.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Absolute liability applies to paragraph (1)(b).

77FM Spirit blending is to be treated as manufacture

- (1) Subject to subsection (2), for greater certainty so far as concerns the application of the provisions of this Act, spirit blending to produce spirit is taken to constitute the manufacture of that spirit.
- (2) For the purposes of this Act, spirit blending to produce spirit is taken not to constitute the manufacture of that spirit if the spirit blending occurred in circumstances specified in an instrument under subsection (3).
- (3) The CEO may, by legislative instrument, specify circumstances for the purposes of subsection (2).
- (4) Subsection (1) does not imply that, in the absence of such a provision, the blending of substances (whether spirit or not) would not constitute the manufacture of the substance produced by the blending.

Part VIIB—Special provisions relating to fuel

77G Fuel blending is to be treated as manufacture

- (1) For greater certainty so far as concerns the application of the provisions of this Act, fuel blending to produce goods covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* is taken to constitute the manufacture of those goods.
- (2) Subsection (1) does not imply that, in the absence of such a provision, the blending of substances (whether fuel products or not) would not constitute the manufacture of the substance produced by the blending.
- (3) In this section:
fuel product means:
 - (a) any excisable goods classified to item 10, 15, 20 or 21 of the Schedule to the *Excise Tariff Act 1921*; or
 - (b) any imported goods that would be classified to item 10 or 15 of that Schedule if they were manufactured in Australia.

77H Blending exemptions

- (1) Goods that are the product of the blending of 1 or more eligible goods (with or without other substances) are taken not to be goods covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* if:
 - (a) both:
 - (i) for each of the eligible goods and other substances, excise duty or a duty of Customs has been paid (unless the applicable duty when entered for home consumption was nil); and
 - (ii) apart from any denatured ethanol for use as fuel in an internal combustion engine, or biodiesel, the rate of each of those duties is the same; or

- (b) the goods are covered by a determination in force under subsection 95-5(1) of the *Fuel Tax Act 2006*.
- (2) However, subsection (1) does not apply if any of the eligible goods or other substances on which excise duty or a duty of Customs has been paid are taxable fuel for which any entity has been entitled to a fuel tax credit under the *Fuel Tax Act 2006*.

Matters to be disregarded in determining whether same rate

- (2AA) For the purposes of paragraph (1)(a), in determining whether excise duty or a duty of Customs has been paid at the same rate on all the eligible goods and the other substances (if any), disregard:
 - (a) any indexation of rates under section 6A of the *Excise Tariff Act 1921*; and
 - (b) any indexation of rates under section 19 of the *Customs Tariff Act 1995*; and
 - (c) any changes of rates under the *Excise Tariff Act 1921* as a result of amendments of that Act by Part 1 of Schedule 1 to the *Excise Tariff Amendment (Fuel Indexation) Act 2015*; and
 - (d) the effect of sections 19AAB and 19AAC of the *Customs Tariff Act 1995*.

Blends of a relevant fuel that is not subject to remission

- (2A) Goods that are the product of the blending of amounts of one kind of relevant fuel are taken not to be goods covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* if both of the following apply:
 - (a) none of the amounts of the relevant fuel are subject to a remission (either in full or in part) of excise duty or a duty of Customs;
 - (b) excise duty or a duty of Customs that is payable on the amounts of the relevant fuel has been paid.

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Blends of LPG or liquefied natural gas that is subject to remission or not subject to duty

- (2B) Goods that are the product of the blending of amounts of one kind of relevant fuel that is either LPG or liquefied natural gas are taken not to be goods covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* if, for each amount in the blend, either of the following applies to the amount:
- (a) the amount is subject to a remission (whether in full or in part) of excise duty or a duty of Customs on the grounds that the amount is not used, or intended for use, in an internal combustion engine in either a motor vehicle or a vessel;
 - (b) the amount is not subject to excise duty or a duty of Customs because the amount was manufactured, produced or imported before 1 December 2011.

Legislative instrument

- (3) Goods that are the product of the blending of 1 or more eligible goods (with or without other substances) are taken not to be goods covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* if the circumstances specified in an instrument under subsection (4) exist.
- (4) The CEO may, by legislative instrument, specify circumstances for the purposes of subsection (3).

Definitions

- (5) In this section:

eligible goods means goods covered by paragraph 10(a), (b), (c), (d), (da), (db), (dc), (e) or (f) of the Schedule to the *Excise Tariff Act 1921*.

relevant fuel means:

- (a) gasoline for use in aircraft; or
- (b) kerosene for use in aircraft; or
- (c) LPG; or

- (d) liquefied natural gas; or
- (e) compressed natural gas that is classified to subitem 10.19C of the Schedule to the *Excise Tariff Act 1921*.

77HA Compressed natural gas that is exempt from excise duty

- (1) Compressed natural gas is exempt from excise duty if any of the following apply:
 - (a) the gas was compressed for use other than as a fuel for a motor vehicle;
 - (b) the gas was compressed other than in the course of carrying on an enterprise (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*);
 - (c) the gas was compressed for use as a fuel for a motor vehicle that:
 - (i) is designed merely to move goods with a forklift and is for use primarily off public roads; or
 - (ii) is of a kind prescribed by the regulations for the purposes of this subparagraph;
 - (d) the gas is exempt from excise duty under subsection (2).
- (2) Compressed natural gas is exempt from excise duty if:
 - (a) the gas was compressed at residential premises (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*); and
 - (b) the rate at which natural gas can be compressed at those premises is not more than:
 - (i) the amount of compressed natural gas per hour prescribed by the regulations; or
 - (ii) if no amount is prescribed—10 kilograms of compressed natural gas per hour; and
 - (c) the gas is not sold or otherwise supplied in the course of carrying on an enterprise (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*).

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77HB Liquefied petroleum gas and liquefied natural gas that is exempt from excise duty

Liquefied petroleum gas or liquefied natural gas is exempt from excise duty if:

- (a) the liquefied petroleum gas or liquefied natural gas is used by a licensed manufacturer on premises covered by the manufacturer licence; and
- (b) the use is in the process of manufacturing:
 - (i) petroleum condensate or stabilised crude petroleum oil; or
 - (ii) liquefied petroleum gas, liquefied natural gas or other hydrocarbons; and
- (c) the manufacturer manufactures the goods referred to in paragraph (b) in accordance with the licence.

77J Goods that are not covered by subitem 10.25, 10.26, 10.27, 10.28 or 10.30

If:

- (a) goods (the *delivered goods*) classified to subitem 10.25, 10.26, 10.27, 10.28 or 10.30 of the Schedule to the *Excise Tariff Act 1921* are delivered for home consumption; and
- (b) a person uses the delivered goods as a solvent; and
- (c) the person manufactures or produces other goods by carrying out a recycling process on the delivered goods; and
- (d) the other goods are for use as a solvent by the person; and
- (e) apart from this section, the other goods would be classified to the subitem of that Schedule that applied to the delivered goods;

then that subitem does not apply to the other goods.

77K Crude oil and condensate may attract more than one excise duty

The fact that excise duty attaches to stabilised crude petroleum oil or to condensate under item 20 or 21 of the Schedule to the *Excise Tariff Act 1921* does not prevent further excise duty attaching to that oil or that condensate under item 10 of that Schedule.

77L Notice requirements for sales or supplies of LPG to which an LPG remission applies

- (1) A person (the *licensee*) who holds a manufacturer licence or a storage licence must give a notice to a person if:
 - (a) the licensee sells or supplies LPG to the person; and
 - (b) an LPG remission applies to the LPG at the time of the sale or supply.

Note: The meaning of *apply* is affected by subsection 4(5).

- (2) A person (the *supplier*) must give a notice to a person if:
 - (a) the supplier sells or supplies the LPG to the person; and
 - (b) an LPG remission applies to the LPG at the time of the sale or supply; and
 - (c) when the supplier was supplied the LPG, the supplier was given a notice under this section (including under a previous application of this subsection) in respect of that LPG.

Note: The regulations may prescribe circumstances in which a notice is not required to be given (see subsection (4)).

Contents of notice

- (3) A notice given under this section must comply with any requirements prescribed by the regulations.

Regulations

- (4) The regulations may prescribe circumstances in which a notice is not required to be given by a person under this section.

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Offence

- (5) A person commits an offence if:
- (a) a person is required to give a notice under this section; and
 - (b) the person fails to give the notice in accordance with this section.

Penalty: 1 penalty unit.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

77M Penalty for using LPG for excisable LPG use

- (1) This section applies if:
- (a) LPG is sold or supplied to a person; and
 - (b) the person uses the LPG for an excisable LPG use; and
 - (c) an LPG remission applies to the LPG at the time of the use.

Note 1: The meaning of *apply* is affected by subsection 4(5).

Note 2: A person might commit an offence if the person sells LPG and the LPG is used for an excisable LPG use (see section 117BA).

- (2) The person must, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to 2 times the amount of the duty that would have been payable on the LPG if:
- (a) an LPG remission had not applied to the LPG; and
 - (b) the LPG had been entered for home consumption on the day on which the Collector made the demand.

Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

- (3) A demand under subsection (2) is not a legislative instrument.

Part VIII—Remissions, refunds, rebates and drawbacks

78 Remissions, rebates and refunds

- (1) Remissions, rebates and refunds of excise duty may be allowed:
 - (a) in respect of excisable goods generally or in respect of the goods included in a class of excisable goods; and
 - (b) in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed, being circumstances, and conditions and restrictions, that relate to excisable goods generally or to the goods included in a class of excisable goods.
- (1A) Regulations made for the purposes of subsection (1) may make provision for and in relation to the CEO granting approvals.
- (2) The regulations may prescribe the amount, or the means of determining the amount, of any remission, rebate or refund of excise duty that may be allowed for the purposes of subsection (1).
- (3) Excise duty is taken to be remitted in respect of fuel if:
 - (a) the fuel is used in the manufacture of goods that are not excisable goods; and
 - (b) the fuel has been chemically transformed (other than by combustion) in that manufacture.

79 Drawbacks

The regulations may make provision for and in relation to allowing drawbacks of Excise duty.

80 Recovery of overpayments of refunds, rebates and drawbacks

- (1) Where an amount has, in whole or in part, been incorrectly paid to a person as a refund or drawback of Excise duty, the person to

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whom the amount was paid shall, on demand in writing being made by the CEO, pay to the Commonwealth an amount equal to the amount, or the part of the amount, incorrectly paid and, if the person fails to pay to the Commonwealth the amount demanded within such period as is specified in the demand, the amount may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

- (2) Where a rebate of duty has been paid to a person and the whole or a part of the rebate was not payable to him or her, the person shall, on demand in writing made by the CEO, pay to the Commonwealth an amount equal to the whole or that part, as the case may be, of the amount of rebate paid to him or her and, if the person fails to pay to the Commonwealth the amount demanded within such period as is specified in the demand, the amount may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

81 Certain interest not payable

- (1) Notwithstanding section 154, where, because of an amendment of the *Excise Tariff Act 1921*, an amount paid by way of Excise duty is repayable to a person, interest on that amount is not payable by the Commonwealth to that person.
- (2) Nothing in subsection (1) shall be taken as implying that, before the commencement of this section, where an amendment of the *Excise Tariff Act 1921* resulted in a person becoming entitled to the repayment of an amount paid by way of Excise duty, interest on that amount was payable by the Commonwealth to that person.

Part IX—Officers

Division 1—Powers of officers

Subdivision A—Preliminary

82 Law relating to legal professional privilege not affected

This Division does not affect the law relating to legal professional privilege.

Subdivision B—General regulatory powers

86 Officers to have access to factories and approved places

- (1) Officers shall at all times have complete access to every part of any factory, and may examine, take account of, and note all containers, utensils, material and excisable goods in the factory.
- (2) Officers shall at all times have complete access to every part of an approved place and may examine and take account of the goods in the approved place.
- (3) Officers may at all times have complete access to every part of premises covered by a producer licence or dealer licence and may examine and take account of the goods (including crops) at the premises.

87 Power to stop conveyances about to leave an excise place

- (1) If a conveyance is about to leave an excise place, an officer may:
 - (a) require the conveyance to stop; and
 - (b) check to establish that there is appropriate documentation authorising the movement from the excise place of any:
 - (i) tobacco leaf in or on the conveyance; or

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- (ii) excisable goods that are subject to the CEO's control (within the meaning of subsection 61(1)) in or on the conveyance.
- (2) For the purposes of subsection (1), an officer may question the person apparently in charge of the conveyance about any goods in, on, or in a container on, the conveyance.
- (3) The power in paragraph (1)(b) includes a power to give directions relating to:
 - (a) the unloading of any goods from the conveyance; or
 - (b) their movement to a particular part of the excise place for further examination.
- (4) If a direction under subsection (3) is not complied with, an officer may do what is necessary to give effect to the direction or to arrange for it to be done.
- (5) An officer must not detain a conveyance under this section for longer than is necessary and reasonable to exercise the powers conferred by this section.
- (6) In this section:

aircraft means any machine or craft that can derive support in the atmosphere from the reactions of the air.

container includes a trailer or other like receptacle, whether with or without wheels, that is used for the movement of goods from one place to another.

87AA Searches of conveyances without warrant

An officer may, without warrant, stop and search a conveyance for tobacco leaf or excisable goods if the officer has reasonable grounds for believing that:

- (a) tobacco leaf or excisable goods are in or on the conveyance; and

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- (b) the conveyance has been used, is being used or is intended to be used in the commission of an offence against:
- (i) a provision of the Excise Acts; or
 - (ii) section 6 of the *Crimes Act 1914*; or
 - (iii) section 11.1, 11.2, 11.2A or 11.5 of the *Criminal Code*; or
 - (iv) a provision of Division 308 in Schedule 1 to the *Taxation Administration Act 1953*.

87A Powers of officers in relation to resources installations

- (1) An officer has, and may exercise, the same powers in relation to an Australian resources installation at which excisable goods are manufactured or produced as he or she would have if the installation were a factory.
- (2) In subsection (1), *Australian resources installation* has the same meaning as in the *Customs Act 1901*.

87B Powers of officers in relation to sea installations

- (1) An officer has, and may exercise, the same powers in relation to an Australian sea installation on which excisable goods are manufactured or produced as the officer would have if the installation were a factory.
- (2) In subsection (1), *Australian sea installation* has the same meaning as in the *Customs Act 1901*.

91 Examine all goods

- (1) Any officer may open packages and examine weigh mark and seal any excisable goods subject to the CEO's control and may lock up seal mark or fasten any plant in or on a factory, and the expense of the examination of the goods including the cost of their removal to the place of examination shall be borne by the owner.
- (2) For the purposes of subsection (1), treat all tobacco as excisable goods.

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92 Seals etc. not to be broken

No fastening, lock, mark, or seal placed by an officer upon any goods or upon any plant in a factory shall be opened, altered, broken, or erased, except by authority.

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Subdivision D—Powers of arrest

100 Power of arrest

- (1) Any officer or police officer may without warrant arrest any person whom he or she has reasonable cause to believe has committed the offence of:
 - (a) unlawfully manufacturing any excisable goods;
 - (b) unlawfully receiving carrying conveying or having upon his or her premises or in his or her custody or under his or her control any excisable goods;
 - (c) being found without lawful excuse upon any premises where excisable goods are being illegally manufactured.
- (2) An officer or police officer may, without warrant, arrest a person if he or she has reasonable ground for believing that the person has committed the offence of assaulting an officer in the execution of his or her duties.

102 Arrested persons to go before Justices

Every person arrested may be detained until such time as he or she can without undue delay be taken before a Justice.

103 Power of Justices with offenders

Any Justice before whom any person is brought under this Act may:

- (a) commit such person to gaol until he or she can be brought before Justices to be dealt with according to law; or
- (b) admit him or her to bail upon his or her giving sufficient security for his or her appearance before Justices at the time and place appointed for the hearing of the charge.

104 Power to detain and search suspected persons

- (1) If any officer or police officer has reasonable cause to suspect that any person is unlawfully carrying or has any goods subject to the CEO's control secreted about him or her:
 - (a) the officer may detain and search the suspected person;
 - (b) before the suspected person is searched he or she may require to be taken before a Justice or the Collector;
 - (c) the Justice or Collector may order the suspected person to be searched or may discharge him or her without search.
- (2) A person may be searched under subsection (1) only by a person of the same sex as the first-mentioned person.

Subdivision E—Miscellaneous

106 Samples

- (1) Samples of material and of partly manufactured excisable goods and of excisable goods subject to the CEO's control, and of goods which an officer has reasonable grounds for suspecting are excisable goods on which duty has not been paid may for any purpose deemed necessary by the Collector be taken utilized and disposed of by any officer in manner prescribed.
- (2) For the purposes of subsection (1), treat all tobacco as excisable goods.

Part IX Officers

Division 1 Powers of officers

Section 107

107 Power to purchase samples

- (1) Any officer may purchase samples of excisable goods from any person being the owner or in possession of excisable goods; and no person being the owner of or in possession of any excisable goods shall refuse to deliver to an officer samples of such excisable goods on tender of a reasonable price for such samples.

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) For the purposes of subsection (1), treat all tobacco as excisable goods.

Division 1A—Search and seizure

Subdivision A—Preliminary

107AA Definitions

In this Division, unless the contrary intention appears:

container includes:

- (a) a trailer or other like receptacle, whether with or without wheels, that is used for the movement of goods from one place to another; and
- (b) any other thing that is or could be used for the carriage of goods, whether or not designed for that purpose.

Note: *Container* is defined differently in the rest of the Act.

evidential material, in relation to an offence, whether the offence is indictable or summary, means a thing relevant to the offence, including such a thing in electronic form.

executing officer, in relation to a search warrant or to a seizure warrant, means:

- (a) an officer named in the warrant by the judicial officer issuing it as being responsible for executing the warrant; or
- (b) if that officer does not intend to be present at the execution of the warrant—any officer whose name has been written in the warrant by the officer so named; or
- (c) another officer whose name has been written in the warrant by the officer last named in the warrant.

forfeited goods means goods forfeited to the Crown under section 116.

Frisk search means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and

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- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

judicial officer, in relation to a search warrant or to a seizure warrant, means:

- (a) a magistrate; or
- (b) a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants.

magistrate means a magistrate who is remunerated by salary or otherwise, and includes a Judge, or acting Judge, of the Local Court of the Northern Territory.

occupier, in relation to premises that are a conveyance or a container, means the person having charge of the conveyance or container.

offence means any of the following:

- (a) an offence against this Act;
- (b) an offence against a provision in Division 308 in Schedule 1 to the *Taxation Administration Act 1953*.

Ordinary search means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and
- (b) an examination of those items.

person assisting, in relation to a search warrant or to a seizure warrant, means:

- (a) an officer who is assisting in the execution of the warrant; or
- (b) a police officer who is assisting in the execution of the warrant; or
- (c) a person whose name has not been written in the warrant and who has been authorised by the CEO to assist in executing the warrant.

premises includes a place, a conveyance or a container.

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search warrant means a warrant issued under section 107BA.

seizure notice means a notice of the kind referred to in section 107FC.

seizure warrant means a warrant issued under section 107CA.

warrant premises means premises in relation to which a search warrant or a seizure warrant is in force.

107AAA Extension of Division to civil penalty for possession of tobacco without relevant documentation etc.

- (1) For the purposes of this Division:
 - (a) treat a civil penalty under subsection 295-75(1) in Schedule 1 to the *Taxation Administration Act 1953* as an offence against this Act; and
 - (b) treat a contravention of that subsection as the commission of an offence against this Act; and
 - (c) treat the commencement of proceedings against a person for a contravention of that subsection as the charging of that person with an offence against this Act.
- (2) To avoid doubt, subsection (1) has effect for the purposes of subsection 107FF(9).

107AB Law relating to legal professional privilege not affected

This Division does not affect the law relating to legal professional privilege.

Subdivision B—Search warrants in respect of things believed to be evidential material

107BA When search warrants can be issued

- (1) A judicial officer may issue a warrant to search premises if the judicial officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or within the next

Section 107BA

72 hours there will be, any evidential material, other than evidential material that is also a forfeited good, on or in the premises.

- (2) If:
- (a) the person applying for the warrant has, at any time previously, applied for a warrant relating to the search of, or the seizure of goods that are on or in, the same premises; and
 - (b) the premises are not an excise place;
- the person must state particulars of those applications and their outcome in the information.
- (3) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:
- (a) the offence to which the warrant relates; and
 - (b) a description of the premises to which the warrant relates; and
 - (c) the kind of evidential material that is to be searched for under the warrant; and
 - (d) the name of the officer who, unless he or she inserts the name of another officer in the warrant, is to be responsible for executing the warrant; and
 - (e) the period for which the warrant remains in force, which must not be more than 7 days; and
 - (f) whether the warrant may be executed at any time or only during particular hours.
- (4) The judicial officer is also to state in the warrant:
- (a) that it authorises the seizure of things (other than evidential material of the kind referred to in paragraph (3)(c)) found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds:
 - (i) to be evidential material in relation to an offence to which the warrant relates or to another offence; and

- (ii) not to be forfeited goods;
if the executing officer or person assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and
 - (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has any evidential material in his or her possession.
- (5) Paragraph (3)(e) does not prevent the issue of successive warrants in relation to the same premises.
- (6) If the application for the warrant is made under section 107DG, this section applies as if:
 - (a) subsection (1) referred to 48 hours rather than 72 hours; and
 - (b) paragraph (3)(e) referred to 48 hours rather than 7 days.
- (7) A judicial officer of a particular State or Territory may issue a warrant in respect of the search of premises in another State or Territory.
- (8) This section is not to be taken to limit any power of search granted to an officer under any other provision of an Excise Act.

107BB The things that are authorised by a search warrant

- (1) A search warrant that is in force in relation to premises authorises the executing officer or a person assisting:
 - (a) to enter the warrant premises; and
 - (b) to search for and to record fingerprints found on or in the premises, and take samples of things (other than human biological fluid or tissue) found on or in the premises for forensic purposes; and
 - (c) to search the premises for the kind of evidential material specified in the warrant, and to seize things of that kind found on or in the premises; and

Section 107BB

- (d) to seize other things found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds:
 - (i) to be evidential material in relation to an offence to which the warrant relates or to another offence; and
 - (ii) not to be forfeited goods;if the executing officer or person assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and
- (e) if the warrant so allows:
 - (i) to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any evidential material in his or her possession; and
 - (ii) to seize any such material found in the course of the search.
- (2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.
- (3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:
 - (a) permits entry of the conveyance, wherever it is; and
 - (b) extends to every container on the conveyance.
- (4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.
- (5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

- (6) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

107BC Use of equipment to examine or process things

- (1) The executing officer or a person assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found on or in the premises in order to determine whether they are things that may be seized under the warrant.
- (2) If:
- (a) it is not practicable to examine or process the things on or in the warrant premises; or
 - (b) the occupier of the premises consents in writing;
- the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.
- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:
- (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
 - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The executing officer or a person assisting may operate equipment already on or in the warrant premises to carry out the examination or processing of a thing found on or in the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or person assisting believes on reasonable grounds that:
- (a) the equipment is suitable for the examination or processing; and

Section 107BD

- (b) the examination or processing can be carried out without damage to the equipment or the thing.

107BD Use of electronic equipment on or in premises

- (1) The executing officer or a person assisting may operate electronic equipment on or in the premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the executing officer or a person assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the material can, by using facilities on or in the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
 - (c) if the material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is on or in the premises and the use of which for that purpose has been agreed to in writing by the occupier of the premises;operate the equipment to copy the material to the storage device and take the storage device from the premises.
- (3) The executing officer or a person assisting may seize equipment under paragraph (2)(a) only if it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c).
- (4) If the executing officer or a person assisting believes on reasonable grounds that:
 - (a) evidential material may be accessible by operating electronic equipment on or in the premises; and
 - (b) expert assistance is required to operate the equipment; and

Section 107BE

- (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;
- he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (5) The executing officer or a person assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (6) The equipment may be secured:
- (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert;
- whichever first occurs.
- (7) If the executing officer or a person assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a judicial officer for an extension of that period.
- (8) The executing officer or a person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
- (9) The provisions of this Subdivision relating to the issue of warrants apply, with such modifications as are necessary, to the issuing of an extension.

107BE Compensation for damage to equipment or data

- (1) This section applies if:
- (a) damage is caused to equipment as a result of it being operated as mentioned in section 107BC or 107BD; or
 - (b) the data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;
- because:

Section 107BF

- (c) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (d) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as they agree on.
 - (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
 - (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
 - (5) Compensation is payable out of money appropriated by the Parliament.
 - (6) In this section:

damage, in relation to data, includes damage by erasure of data or addition of other data.

107BF Copies of seized things to be provided

- (1) Subject to subsection (2), if the executing officer or a person assisting seizes, under a warrant relating to premises:
 - (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a storage device, the information in which can be readily copied;the executing officer or person assisting must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is

Section 107CA

executed, give a copy of the document, film, computer file, thing or information to that person as soon as practicable after the seizure.

- (2) Subsection (1) does not apply if:
- (a) the thing that has been seized was seized under paragraph 107BD(2)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

Subdivision C—Seizure of goods believed to be forfeited goods

107CA When seizure warrants can be issued

- (1) A judicial officer may issue a warrant to seize goods on or in particular premises if the judicial officer is satisfied by information on oath that an officer:
- (a) has reasonable grounds for suspecting that the goods:
 - (i) are forfeited goods; and
 - (ii) are, or within the next 72 hours will be, on or in the premises; and
 - (b) has demonstrated the necessity, in all the circumstances, for seizure of the goods.
- (2) In considering whether the officer has demonstrated the necessity, in all the circumstances, for seizure of the goods, the judicial officer may have regard to, but is not limited to, consideration of the following factors:
- (a) the seriousness or otherwise of any offence because of the commission of which the goods are believed to be forfeited goods;
 - (b) the circumstances in which any such offence is believed to have been committed;
 - (c) the pecuniary or other penalty that might be imposed for any such offence;
 - (d) the nature, quality, quantity and estimated value of the goods;

Section 107CA

- (e) whether administrative penalties might be imposed in respect of the goods;
 - (f) the inconvenience or cost to any person having a legal or equitable interest in the goods if they were seized.
- (3) If:
- (a) the person applying for the warrant has, at any time previously, applied for a warrant relating to the search of, or seizure of goods that are on or in, the same premises; and
 - (b) the premises are not an excise place;
- the person must state particulars of those applications and their outcome in the information.
- (4) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:
- (a) a description of the goods to which the warrant relates; and
 - (b) a description of the premises on or in which the goods are believed to be located; and
 - (c) the name of the officer who, unless that officer inserts the name of another officer in the warrant, is to be responsible for executing the warrant; and
 - (d) the period for which the warrant remains in force, which must not be more than 7 days; and
 - (e) whether the warrant may be executed at any time or only during particular hours.
- (5) The judicial officer is also to state in the warrant whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has any forfeited goods of the kind referred to in paragraph (4)(a) in his or her possession.
- (6) Paragraph (4)(d) does not prevent the issue of successive warrants in relation to the same premises.

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- (7) If the application for the warrant is made under section 107DG, this section applies as if:
 - (a) subsection (1) referred to 48 hours rather than 72 hours; and
 - (b) paragraph (4)(d) referred to 48 hours rather than 7 days.
- (8) A judicial officer of a particular State or Territory may issue a warrant in respect of the seizure of goods on or in premises in another State or Territory.

107CB The things that are authorised by seizure warrants

- (1) A seizure warrant that is in force in relation to premises authorises the executing officer or a person assisting:
 - (a) to enter the warrant premises; and
 - (b) to search for the goods described in the warrant; and
 - (c) to seize the goods described in the warrant; and
 - (d) if the warrant so allows:
 - (i) to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any goods that are goods the subject of the warrant in his or her possession; and
 - (ii) to seize any such goods found in the course of that search.
- (2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.
- (3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:
 - (a) permits entry of the conveyance, wherever it is; and
 - (b) extends to every container on the conveyance.

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- (4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.
- (5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.
- (6) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

Subdivision D—Provisions applicable both to search and seizure warrants

107DA Conduct of ordinary searches and frisk searches

An ordinary search or a frisk search of a person under this Division must, if practicable, be conducted by a person of the same sex as the person being searched.

107DB Announcement before entry

- (1) The executing officer must, before any person enters premises under a search warrant or a seizure warrant:
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) The executing officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
 - (a) the safety of a person (including the executing officer); or
 - (b) that the effective execution of the warrant is not frustrated.

107DC Details of warrant to be given to occupier

- (1) If:
 - (a) a search warrant or a seizure warrant in relation to premises is being executed; and
 - (b) the occupier of the premises or another person who apparently represents the occupier is present at the place where the warrant is executed;the executing officer or a person assisting must make available to that person a copy of the warrant.
- (2) If a person is searched under a warrant in relation to premises, the executing officer or a person assisting must show the person a copy of the warrant.
- (3) The executing officer must identify himself or herself to the person at the place where the warrant is executed.
- (4) At the time of executing the warrant, the executing officer or a person assisting:
 - (a) is not required to have in his or her possession or under his or her immediate control the original warrant; but
 - (b) must have in his or her possession or under his or her immediate control a copy of the warrant.
- (5) In this section:

a copy of the warrant means:

 - (a) in relation to a warrant issued under section 107BA or 107CA—a copy that includes the signature of the judicial officer who issued the warrant and the seal of the relevant court; and
 - (b) in relation to a warrant issued under section 107DG—a completed form of warrant that includes the name of the judicial officer who issued the warrant.

Section 107DD

107DD Occupier entitled to be present during search or seizure

- (1) If:
 - (a) a search warrant or a seizure warrant in relation to premises is being executed; and
 - (b) the occupier of the premises or another person who apparently represents the occupier is present at the place where the warrant is executed;
the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search or seizure being conducted.
- (2) The right to observe the search or seizure being conducted ceases if the person impedes the search or seizure.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

107DE Availability of assistance and use of force in executing a warrant

In executing a search warrant or a seizure warrant:

- (a) the executing officer may obtain such assistance; and
- (b) the executing officer, or an officer who is assisting in executing the warrant, may use such force against persons and things;
as is necessary and reasonable in the circumstances.

107DF Specific powers available to executing officers

- (1) In executing a search warrant or a seizure warrant in relation to premises, the executing officer or a person assisting may:
 - (a) for a purpose incidental to the execution of the warrant; or
 - (b) if the occupier of the premises consents in writing;
take photographs or video recordings of the premises or of things on or in the premises.
- (2) If a search warrant or a seizure warrant in relation to premises is being executed, the executing officer and the persons assisting

Section 107DG

may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises:

- (a) for not more than one hour; or
 - (b) for a longer period if the occupier of the premises consents in writing.
- (3) If:
- (a) the execution of a search warrant or of a seizure warrant is stopped by an order of a court; and
 - (b) the order is later revoked or reversed on appeal; and
 - (c) the warrant is still in force;
- the execution of the warrant may be completed.
- (4) If:
- (a) the execution of a search warrant or of a seizure warrant is stopped by an order of a court; and
 - (b) the order is later revoked or reversed on appeal; and
 - (c) the warrant has ceased to be in force;
- the court revoking or reversing the order may reissue the warrant for a further period not exceeding 7 days.
- (5) The court must not exercise the power under subsection (4) unless it is satisfied of the matters set out in subsection 107BA(1) or 107CA(1).

107DG Warrants by telephone or other electronic means

- (1) An officer may apply to a judicial officer for a search warrant or for a seizure warrant by telephone, fax or other electronic means:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The judicial officer may require communication by voice to the extent that is practicable in the circumstances.

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- (3) An application under this section must include all information required to be provided in an ordinary application for a search warrant or for a seizure warrant, but the application may, if necessary, be made before the information is sworn.
- (4) If an application is made to a judicial officer under this section and the judicial officer, after considering the information and having received and considered such further information (if any) as the judicial officer required, is satisfied that:
 - (a) a search warrant or a seizure warrant in the terms of the application should be issued urgently; or
 - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;the judicial officer may complete and sign the same form of warrant that would be issued under section 107BA or 107CA.
- (5) If the judicial officer decides to issue the warrant, the judicial officer is to inform the applicant, by telephone, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.
- (6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the judicial officer, stating on the form the name of the judicial officer and the day on which and the time at which the warrant was signed.
- (7) The applicant must, not later than the day after:
 - (a) the day of expiry of the warrant; or
 - (b) the day on which the warrant was executed;whichever is the earlier, give or transmit to the judicial officer the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.
- (8) The judicial officer must:
 - (a) attach to the documents provided under subsection (7) the form of warrant signed by the judicial officer; and
 - (b) give or transmit to the applicant the attached documents.

- (9) If:
- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
 - (b) the form of warrant signed by the judicial officer is not produced in evidence;
- the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

107DH Receipts for things seized under warrant

- (1) If a thing is seized under a search warrant or a seizure warrant, the executing officer or a person assisting must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in the one receipt.

107DI Offence for making false statements in warrants

A person must not make, in an application for a search warrant or for a seizure warrant, a statement if the person knows that the statement:

- (a) is false or misleading in a material particular; or
- (b) omits any matter or thing without which the statement is misleading.

Penalty: Imprisonment for 2 years.

107DJ Offences relating to telephone warrants

A person must not:

- (a) state in a document that purports to be a form of warrant under section 107DG the name of a judicial officer unless that judicial officer issued the warrant; or
- (b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the judicial officer; or

Section 107EA

- (c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows:
 - (i) has not been approved by a judicial officer under that section; or
 - (ii) departs in a material particular from the terms authorised by a judicial officer under that section; or
- (d) give to a judicial officer a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

Subdivision E—Dealing with things seized as evidential material under a search warrant or section 9 of the Crimes Act 1914

107EA Retention of things seized under a search warrant etc.

- (1) Subject to any law of the Commonwealth, a State or a Territory permitting the retention, destruction or disposal of a thing seized as evidential material by an officer under a search warrant or section 9 of the *Crimes Act 1914*, the officer in charge of the investigation must return it if:
 - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
 - (b) 120 days after its seizure:
 - (i) proceedings in respect of which the thing may afford evidence have not been started; and
 - (ii) an order permitting the thing to be retained has not been made under section 107EB; and
 - (iii) an order of a court of the Commonwealth or of a State or Territory permitting the retention, destruction or disposal of the thing has not been made;
- whichever first occurs.

- (2) For the purposes of this section, the return of a thing requires its return to the person reasonably believed to be the owner of the thing in a condition as near as practicable to the condition in which it was seized.

107EB Magistrate may permit a thing seized under a search warrant etc. to be retained

- (1) If a thing is seized as evidential material by an officer under a search warrant or section 9 of the *Crimes Act 1914*, and:
- (a) before the end of 120 days after the seizure; or
 - (b) before the end of a period previously specified in a magistrate's order under this section;
- proceedings in respect of which the thing may afford evidence have not been started, an officer may apply to a magistrate for an order that the thing be retained.
- (2) If the magistrate is satisfied:
- (a) that it is necessary for the retention of the thing to be continued:
 - (i) for the purposes of an investigation as to whether an offence has been committed; or
 - (ii) to enable evidence of an offence to be assembled for the purposes of a prosecution; and
 - (b) that there has been no avoidable delay in conducting the investigation or assembling the evidence concerned;
- the magistrate may order that the thing be retained for a period specified in the order.
- (3) Before making the application, the officer must:
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person whom the officer believes to have such an interest of the proposed application.

Section 107FA

Subdivision F—Dealing with forfeited goods seized under a seizure warrant or section 9 of the Crimes Act 1914

107FA Seized goods to be secured

- (1) In this section:

storage place, in relation to goods, means a place approved by a Collector as a place for the storage of goods of that kind.

- (2) If an officer seizes any goods under a seizure warrant, the officer must, as soon as practicable, take those goods to a storage place.
- (3) If a person assisting under a seizure warrant (other than an officer) seizes any forfeited goods under the warrant, the person must, as soon as practicable, deliver the goods into the custody of an officer.
- (4) If a police officer seizes any forfeited goods under section 9 of the *Crimes Act 1914*, the police officer must, as soon as practicable, deliver the goods into the custody of an officer.
- (5) If goods are delivered to an officer under subsection (3) or (4), the officer must:
- (a) if paragraph (b) does not apply—as soon as practicable, deliver the goods to a storage place; or
 - (b) if the goods are delivered to the officer at a storage place—leave the goods at that place.

107FB Requirement to serve seizure notices

- (1) After goods have been seized under a seizure warrant or section 9 of the *Crimes Act 1914*, the officer in charge of the investigation must serve, within 7 days after the seizure, a seizure notice on:
- (a) the owner of the goods; or
 - (b) if the owner cannot be identified after reasonable inquiry—the person in whose possession or under whose control the goods were when they were seized.

- (2) Subsection (1) applies whether or not a claim for the return of the goods seized has been made under section 107FD.
- (3) The notice must be in writing and must be served:
 - (a) personally or by post; or
 - (b) if no person of the kind referred to in subsection (1) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.
- (4) A seizure notice may be served on a person who is outside Australia.

107FC Matters to be dealt with in seizure notices

A seizure notice must set out the following:

- (a) a statement identifying the goods;
- (b) the day on which they were seized;
- (c) the ground, or each of the grounds, on which they were seized;
- (d) a statement that, if a claim for the return of the goods has not already been made, and is not made within 30 days after the day the notice is served, the goods will be taken to be condemned as forfeited to the Crown;
- (e) if:
 - (i) the notice is to be served in a foreign country; and
 - (ii) the person served has not yet made such a claim;a statement that the person served may not make such a claim unless he or she has first appointed in writing an agent in Australia with authority to accept service of documents, including process in any proceedings arising out of the matter.

Section 107FD

107FD Claim for return of goods seized

- (1) If forfeited goods are seized under a seizure warrant or section 9 of the *Crimes Act 1914*, the owner of the goods may, whether or not a seizure notice has yet been served on the owner, make a claim to the CEO for the return of the goods.
- (2) A claim:
 - (a) must be in writing in an approved form; and
 - (b) must specify the grounds on which the claim is made; and
 - (c) if it is made by a person who does not reside or have a place of business in Australia, must:
 - (i) appoint an agent in Australia with authority to accept service of documents, including process in any proceedings, arising out of the matter; and
 - (ii) specify the address of the agent for service; and
 - (iii) be accompanied by the written consent of the agent, signed by the agent, agreeing to act as agent.

107FE Treatment of goods seized if no claim for return is made

- If:
- (a) forfeited goods are seized under a seizure warrant or section 9 of the *Crimes Act 1914*; and
 - (b) a seizure notice has been served; and
 - (c) at the end of 30 days after the day the notice was served, no claim has been made for return of the goods;
- the goods are taken to be condemned as forfeited to the Crown.

107FF Treatment of goods seized if a claim for return is made

- (1) This section applies if:
 - (a) forfeited goods are seized under a seizure warrant or section 9 of the *Crimes Act 1914*; and
 - (b) not later than 30 days after the day the seizure notice was served, a claim is made under section 107FD for return of the goods.

Section 107FF

- (2) The officer in charge of the investigation must, subject to any law of the Commonwealth, a State or a Territory permitting their retention, destruction or disposal, return the goods unless:
- (a) the goods have been dealt with under section 107FJ; or
 - (b) each of the following applies:
 - (i) not later than 120 days after the claim for their return is made, proceedings in respect of an offence involving the goods have been commenced;
 - (ii) on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or
 - (c) each of the following applies:
 - (i) not later than 120 days after the claim for their return is made, an order permitting the goods to be retained for a specified period has been made under section 107FG;
 - (ii) before the end of that specified period, proceedings in respect of an offence involving the goods have been commenced;
 - (iii) on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or
 - (d) each of the following applies:
 - (i) not later than 120 days after the claim for their return is made, an order permitting the goods to be retained for a specified period has been made under section 107FG;
 - (ii) before the end of that specified period, proceedings have been commenced before a court of summary jurisdiction for a declaration that the goods are special forfeited goods;
 - (iii) on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or
 - (e) if the goods were seized as special forfeited goods:
 - (i) not later than 120 days after the claim for their return is made, proceedings before a court of summary

Section 107FF

jurisdiction for a declaration that the goods are special forfeited goods have been commenced; and

- (ii) on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown.

(3) If:

- (a) forfeited goods seized under a seizure warrant or section 9 of the *Crimes Act 1914* have not been dealt with under section 107FJ; and
- (b) proceedings of the kind referred to in paragraph (2)(b) or (c) are commenced in respect of an offence involving the goods; and
- (c) on completion of the proceedings, the court:
 - (i) finds that the offence is proved; and
 - (ii) is satisfied, in all the circumstances of the case, that it is appropriate that an order be made for condemnation of the goods as forfeited to the Crown;

the court must make an order to that effect.

(4) If:

- (a) forfeited goods seized under a seizure warrant or section 9 of the *Crimes Act 1914* have not been dealt with under section 107FJ; and
- (b) proceedings of the kind referred to in paragraph (2)(b) or (c) are commenced in respect of an offence involving the goods; and
- (c) on completion of the proceedings, the court is satisfied that the goods are special forfeited goods;

the court must make an order for condemnation of the goods as forfeited to the Crown, whether or not the court finds the offence proved.

(5) Subject to subsection (6), if:

- (a) goods seized as special forfeited goods have not been dealt with under section 107FJ; and

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- (b) proceedings of the kind referred to in paragraph (2)(d) or (e) are commenced in respect of the goods; and
 - (c) on completion of the proceedings, the court is satisfied that the goods are special forfeited goods;
- the court must declare the goods to be special forfeited goods and make an order for condemnation of the goods as forfeited to the Crown.
- (6) A court must not make an order for condemnation of goods under subsection (5) if proceedings for an offence involving the goods have been commenced.
 - (7) If the finding of a court in proceedings under paragraph (2)(b), (c), (d) or (e) in respect of goods that have not been dealt with under section 107FJ may be taken on appeal to another court, the goods are not to be returned under subsection (2), or disposed of under section 107FM:
 - (a) while that appeal may be made, or
 - (b) if it is made, until the completion of that appeal.
 - (8) For the purposes of this section, the return of goods requires their return to the person reasonably believed to be the owner of the goods in a condition as near as practicable to the condition in which they were seized.
 - (9) In this section:
 - offence** means an offence against any law of the Commonwealth, a State or a Territory.
 - special forfeited goods** means goods forfeited to the Crown under paragraph 116(1)(da).
 - (10) In this section, a reference to completion of proceedings includes a reference to completion of any appeal process arising from those proceedings.

Section 107FG

107FG Magistrate may permit goods seized under a seizure warrant or section 9 of the *Crimes Act 1914* to be retained

- (1) If forfeited goods are seized under a seizure warrant or section 9 of the *Crimes Act 1914* and:
 - (a) before the end of 120 days after the making of a claim for their return; or
 - (b) before the end of the period previously specified in a magistrate's order under this section;proceedings of the kind referred to in paragraph 107FF(2)(b) have not been started, an officer may apply to a magistrate for an order that the goods be retained.
- (2) If the magistrate is satisfied that it is necessary:
 - (a) that the retention of the goods continue while evidence of the offence to which the proceedings referred to in paragraph 107FF(2)(b) relate is assembled; and
 - (b) that there has been no avoidable delay in assembling that evidence;the magistrate may order that the goods be retained for a period specified in the order.
- (3) Before making the application, the officer must:
 - (a) take reasonable steps to discover who has an interest in the retention of the goods; and
 - (b) if it is practicable to do so, notify each person whom the officer believes to have such an interest of the proposed application.

107FH Right of compensation in certain circumstances for goods disposed of or destroyed

- (1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown because no claim for their return was made, a person may apply to a court of competent jurisdiction under this section for compensation.

Section 107FI

- (2) A right to compensation exists if:
- (a) the goods are not special forfeited goods within the meaning of section 107FF; and
 - (b) the goods were not used or otherwise involved in the commission of an offence; and
 - (c) the person establishes, to the satisfaction of the court:
 - (i) that he or she is the rightful owner of the goods; and
 - (ii) that there were circumstances providing a reasonable excuse for the failure to claim the goods not later than 30 days after the day the seizure notice was served.
- (3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to:
- (a) if the goods have been sold—the proceeds of the sale; and
 - (b) if the goods have been destroyed—the market value of the goods at the time of their destruction.

107FI Effect of forfeiture

When goods are, or are taken to be, condemned as forfeited to the Crown, the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

107FJ Immediate disposal of certain goods

- (1) The CEO may cause goods to be dealt with in such manner as the CEO considers appropriate (including destruction of the goods) if:
- (a) the goods are seized under a seizure warrant or section 9 of the *Crimes Act 1914*; and
 - (b) any of the following applies:
 - (i) the goods are perishable goods;
 - (ii) the CEO is satisfied that the goods do not meet a standard that applies to goods of that kind;

Section 107FJ

- (iii) the CEO is satisfied that there is a reasonable likelihood that the goods, if made available to the public, would constitute a risk to public health or public safety.
- (2) As soon as practicable, but not later than 7 days after the goods referred to in subsection (1) have been dealt with, the CEO must give or publish a notice in accordance with subsection (4).
- (3) The notice must be in writing and must be served:
 - (a) personally or by post on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized; or
 - (b) if no person of the kind referred to in paragraph (a) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.
- (4) The notice must:
 - (a) identify the goods; and
 - (b) state that the goods have been seized under a seizure warrant or section 9 of the *Crimes Act 1914* (as the case may be) and give the reason for the seizure; and
 - (c) state that the goods have been dealt with under subsection (1) and specify the manner in which they have been so dealt with and the reason for doing so; and
 - (d) set out the terms of subsection (5).
- (5) If goods are dealt with in accordance with subsection (1), the owner of the goods may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the goods at the time they were so dealt with.
- (6) A right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) exists if:
 - (a) the goods are not special forfeited goods within the meaning of section 107FF; and

Section 107FK

- (b) the goods were not used or otherwise involved in the commission of an offence; and
 - (c) the owner of the goods establishes to the satisfaction of the Court that, at the time the goods were dealt with:
 - (i) if the goods were dealt with on the ground mentioned in subparagraph (1)(b)(i)—the goods were not perishable goods; or
 - (ii) if the goods were dealt with on the ground mentioned in subparagraph (1)(b)(ii)—the goods met the standards that applied to goods of that kind; or
 - (iii) if the goods were dealt with on the ground mentioned in subparagraph (1)(b)(iii)—there was no reasonable likelihood that the goods, if made available to the public, would constitute a risk to public health or public safety.
- (7) If a person establishes a right to recover the market value of the goods at the time they were dealt with, the Court must order the payment by the Commonwealth of an amount equal to that value at that time.
- (8) For the purposes of subsections (1) and (6), a reference to perishable goods is taken to include a reference to goods that will perish unless:
- (a) treated with chemicals to preserve them (for example, goods such as tobacco); or
 - (b) stored in special conditions (for example, conditions such as refrigeration).

107FK Release of goods on security

- (1) This section applies to goods:
- (a) that have been seized under a seizure warrant or section 9 of the *Crimes Act 1914*; and
 - (b) that are not taken to be forfeited to the Crown under section 107FE; and

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- (c) in respect of which proceedings have not yet been brought by the Commonwealth under section 107FF.
- (2) The owner of the goods may apply to a court of summary jurisdiction for an order that the goods be released to the owner on provision to the CEO of security for an amount determined by the court in accordance with subsection (4).
- (3) In determining whether or not to order the release of the goods on provision of a security, the court may have regard to:
 - (a) the impact that the continued retention of the goods would have on the economic interests of third parties; and
 - (b) any other like matters that the court considers relevant.
- (4) For the purposes of this section, the security to be provided in respect of the goods is security for an amount determined by the court that does not exceed the sum of:
 - (a) the market value of the goods at the time when the order is made; and
 - (b) the costs incurred for storage of the goods from the time of their seizure until the time of their release under this section; reduced by the amount of any duty that has been paid on the goods.
- (5) If the security is given, the CEO is to release the goods to the applicant.

107FL Service by post

Either:

- (a) a seizure notice under section 107FB; or
 - (b) a notice under subsection 107FG(3);
- posted as a letter addressed to a person at the last address of the person known to the sender is taken to be properly addressed for the purposes of section 29 of the *Acts Interpretation Act 1901*.

107FM Disposal of forfeited goods

All goods seized under a seizure warrant or section 9 of the *Crimes Act 1914* that are taken to be condemned as forfeited to the Crown under section 107FE or that are condemned under section 107FF shall be dealt with and disposed of in accordance with the directions of the CEO.

107FN Destruction or concealment of evidential material or forfeited goods

- (1) A person must not engage in conduct if:
- (a) the conduct:
 - (i) destroys, or renders incapable of identification, a document or thing that is, or may be, evidential material or a forfeited good; or
 - (ii) renders illegible or indecipherable such a document or thing; or
 - (iii) places or conceals on his or her body, or in any clothing worn by the person, such a document or thing; and
 - (b) the conduct is engaged in with the intention of preventing it from being seized by an officer in the exercise of the person's powers under a search warrant or a seizure warrant.

Penalty: Imprisonment for 2 years.

- (2) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

Section 107GA

Subdivision G—Miscellaneous

107GA Nature of functions of magistrate under sections 107EB and 107FG

- (1) A function of making an order conferred on a magistrate by section 107EB or 107FG is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (2) Without limiting the generality of subsection (1), an order made by a magistrate under section 107EB or 107FG has effect only by virtue of this Act and is not taken, by implication, to be made by a court.
- (3) A magistrate performing a function of, or connected with, making an order under section 107EB or 107FG has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).

107GB Retaining evidential material of goods immediately disposed of

- (1) If goods are dealt with under section 107FJ, the CEO must ensure that, before the goods are so dealt with:
 - (a) a sample of the goods is taken in accordance with subsection (2); and
 - (b) a written record of the goods is made.
- (2) An officer taking a sample of goods for the purposes of subsection (1) must, in the presence of another officer:
 - (a) divide the sample into 3 equal parts; and
 - (b) mark and securely seal each part; and
 - (c) retain one part for examination by an analyst appointed under section 107GC; and
 - (d) retain one part for further examination, if necessary; and

Section 107GC

- (e) retain one part for delivery for further examination by a person nominated under subsection (4), in the event that the owner of the goods requests further examination.
- (3) A sample taken (other than of perishable goods) or a record made under subsection (1) must be retained until the later of:
 - (a) the end of the period of 3 years from the day the sample is taken or the record made; or
 - (b) if proceedings are commenced in relation to those goods—the proceedings are completed.
- (4) If an owner of goods dealt with under section 107FJ requests further examination of a sample of the goods, that further examination is to be performed by a person nominated by the owner who is, in the CEO's opinion, suitably qualified for the task.

107GC Appointment of analyst

The CEO may, by written instrument, appoint an officer or other suitably qualified person to be an analyst for the purposes of this Act.

107GD Evidentiary certificates in relation to goods immediately disposed of

Goods for which evidentiary certificates may be provided

- (1) This section applies to proceedings in respect of goods that have been dealt with under section 107FJ.

Evidentiary certificate signed by officer

- (2) An officer may sign a certificate stating any of the following:
 - (a) that a person had, or did not have, a licence, permission or authority under this Act at a particular time;
 - (b) if a person had a licence, permission or authority under this Act—the details of that licence, permission or authority;

Section 107GD

- (c) that particular premises were, or were not, the subject of a licence, permission or authority under this Act at a particular time.

Analyst's certificate

- (3) An analyst appointed under section 107GC may sign a certificate stating in respect of a sample of the goods taken under section 107GB:
 - (a) that the analyst was appointed under section 107GC; and
 - (b) when and from whom the sample was received; and
 - (c) what, if any, labels or other means of identifying the sample accompanied it when it was received; and
 - (d) what container or containers the sample was in when it was received; and
 - (e) a description of the sample received; and
 - (f) when the sample, or a portion of it, was analysed; and
 - (g) a description of the method of analysis; and
 - (h) the results of the analysis.

Certificate is prima facie evidence of the matters stated

- (4) A certificate is admissible as prima facie evidence of the matters stated in the certificate and, unless the contrary is proven, a document purporting to be such a certificate must be taken to be such a certificate.

Copy of certificate must be given to defendant

- (5) Despite subsection (4), a certificate must not be admitted in evidence in proceedings for an offence in relation to the goods unless the person charged with the offence, or a legal practitioner who has appeared for the person in those proceedings, has been given a copy of the certificate at least 14 days before the certificate is sought to be admitted.

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Person giving certificate may be called to give evidence

- (6) Subject to subsection (7), if a certificate is admitted in evidence in proceedings for an offence, the person charged with the offence may require the person who signed the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.
- (7) Subsection (6) does not entitle the person charged to require the person who signed the certificate to be called as a witness for the prosecution unless:
 - (a) in the case of a certificate under subsection (3), the prosecutor has been given at least 4 days' notice of the person's intention to require the analyst to be called; or
 - (b) the court, by order, allows the person charged to require the person giving the certificate to be called.

Division 2—Protection to officers

108 Reasonable cause for seizure a bar to action

No person shall be liable for any seizure under this Act for which there shall have been reasonable cause, and when any claimant recovers any goods seized or any proceeds thereof and at the same time reasonable cause for the seizure is found such finding shall bar all proceedings against all persons concerned in the seizing.

109 Notice of action to be given

No proceeding shall be commenced against any officer for anything done in execution of or by reason of his or her office until one month next after notice in writing shall have been delivered to him or her or left at his or her usual place of abode by the plaintiff, or the plaintiff's attorney or agent, in which notice shall be clearly stated the cause and nature of the proceeding and the court in which the same is intended to be instituted, the name and place of abode of the plaintiff and the name and place of business of such attorney or agent unless the Supreme Court of a State or Territory has granted leave to the plaintiff to proceed without notice, which leave the Court may grant on such terms as it thinks just.

110 Defect in notice not to invalidate

No notice under section 109 shall be deemed invalid by reason of any defect or inaccuracy therein unless the Court is of opinion that the defect or inaccuracy would prejudice the defendant in his or her defence, and the Court may give leave to amend such notice as it thinks just.

111 No evidence to be produced but that contained in notice

Upon any proceeding instituted in pursuance of notice the plaintiff shall not be at liberty to advance any evidence of any cause of action except such as has been distinctly stated in such notice nor

shall the plaintiff be entitled to a verdict without proving on the trial that such notice has been duly served.

112 Officer may tender amends

It shall be lawful for any officer to whom notice of proceeding shall have been given at any time within one month after such notice to tender amends to the plaintiff, or the plaintiff's attorney or agent, and in case such amends be not accepted to plead such tender in defence either alone or with other defences and if the amends tendered shall be found to have been sufficient no costs shall be recovered against an officer and he or she shall be entitled to costs if he or she shall have brought the amount into court when entering his or her defence.

113 Commencement of proceedings against officers

Every proceeding against any officer shall except as mentioned in section 114 be commenced within 6 months after its cause shall have arisen and not afterwards and the venue shall be local and the defendant may plead the general issue and give any special matter in evidence.

114 Time for commencing action

- (1) No proceeding whether against an officer or otherwise for anything done (whether before or after the commencement of this section) for the protection of the revenue in relation to any Excise Tariff or Excise Tariff alteration proposed in the Parliament shall, except as mentioned in section 115, be commenced before the close of the session in which the Excise Tariff or Excise Tariff alteration is so proposed or before the expiration of 12 months after the Excise Tariff or Excise Tariff alteration is so proposed, whichever first occurs.
- (2) No proceeding, whether against an officer or otherwise, for anything done for the protection of the revenue in relation to an Excise Tariff or Excise Tariff alteration that is intended to be

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proposed in accordance with a notice under section 160B shall, except as provided in section 115, be commenced before:

- (a) the seventh sitting day of the House of Representatives after the date of publication of the notice, or the day on which the period of 6 months from the date of publication of the notice expires, whichever is the earlier day; or
- (b) where, on or before the earlier of the days referred to in paragraph (a), an Excise Tariff or Excise Tariff alteration that would validate the thing so done is proposed in the Parliament—the close of the session in which the Excise Tariff or Excise Tariff alteration is so proposed, or the expiration of 12 months after the Excise Tariff or Excise Tariff alteration is so proposed, whichever first happens.

115 Security may be required

The Supreme Court of a State or Territory on the application of any person who desires to commence any proceeding mentioned in section 114 against an officer may require the officer to give security to the satisfaction of the court to abide the result of the proceeding and in default of the giving of such security may sanction the immediate commencement of the proceedings.

Part X—Penal provisions

116 Forfeiture

- (1) The following goods shall be forfeited to the Crown:
- (a) all excisable goods manufactured or partly manufactured by a person who is not a licensed manufacturer;
 - (aa) all tobacco in respect of which a person:
 - (i) commits an offence against this Act or an offence against a provision in Division 308 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (ii) contravenes subsection 295-75(1) in Schedule 1 to the *Taxation Administration Act 1953*;
 - (b) all tobacco seed, tobacco plant or tobacco leaf found on any premises where the manufacture of excisable goods is unlawfully carried on;
 - (ba) all tobacco seed, tobacco plant or tobacco leaf that has been moved without permission under section 44;
 - (bb) all tobacco seed, tobacco plant (whether or not in the ground) or tobacco leaf found in the possession, custody or control of a person (other than a licensed producer, licensed dealer or licensed manufacturer) without permission;
 - (bc) all tobacco seed, tobacco plant (whether or not in the ground) or tobacco leaf kept or stored at a place that is not covered by a producer licence, dealer licence or manufacturer licence;
 - (c) all goods used, or capable of being used, in, or in connexion with, the manufacture of excisable goods, found on any premises where the manufacture of excisable goods is unlawfully carried on;
 - (ca) without limiting paragraph (c), equipment in respect of which a person commits an offence against section 308-205 or 308-210 in Schedule 1 to the *Taxation Administration Act 1953*;

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- (d) all excisable goods subject to the CEO's control that are moved, altered or interfered with except as authorized by this Act;
 - (da) a still made, removed, set up, erected, sold or otherwise disposed of, purchased or otherwise acquired, imported, or in the possession, custody or control of a person, in contravention of section 77FK;
 - (e) all vehicles and animals conveying, or having packed therein or thereon, any forfeited goods, and all animals and harness used in drawing any such vehicle; and
 - (f) all packages in which forfeited goods are contained.
- (2) For the purposes of subsection (1), goods consisting of beer as defined in the Prefatory Notes to the Schedule to the *Excise Tariff 1921* that are sold or offered for sale in contravention of paragraph 120(1)(iiia) shall be deemed to be excisable goods manufactured by a person who is not a licensed manufacturer.

117 Unlawful possession of excisable goods

- (1) A person (other than a licensed manufacturer) must not, without permission, intentionally possess, or have custody or control of, manufactured or partly manufactured excisable goods on which duty has not been paid knowing, or being reckless as to whether, the goods are excisable goods on which duty has not been paid.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
- (b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A person (other than a licensed manufacturer) must not, without permission, possess, or have custody or control of, manufactured or partly manufactured excisable goods on which duty has not been paid.

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Penalty: 100 penalty units.

Note: An infringement notice may be issued for an offence against this subsection, see Part XA.

- (3) Strict liability applies to subsection (2).

117A Unlawfully moving excisable goods

- (1) A person must not, without permission, intentionally move any excisable goods on which excise duty has not been paid from one place to another knowing, or being reckless as to whether, the goods are excisable goods on which excise duty has not been paid.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
(b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A person must not, without permission, move any excisable goods on which excise duty has not been paid from one place to another.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

117B Unlawfully selling excisable goods

- (1) A person must not intentionally sell excisable goods on which duty has not been paid knowing, or being reckless as to whether, the goods are excisable goods on which duty has not been paid.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and

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- (b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A person must not sell excisable goods on which duty has not been paid.

Penalty: 100 penalty units.

Note: An infringement notice may be issued for an offence against this subsection, see Part XA.

- (3) Strict liability applies to subsection (2).

- (4) Subsections (1) and (2) do not apply in relation to a sale of excisable goods on which duty has not been paid if:

- (a) at the time of the sale, the goods are kept or stored at an approved place; and
(b) after the sale, the goods are kept or stored at that place or another approved place until they are entered for home consumption or delivered for exportation.

Note: A defendant bears an evidential burden for the matters in subsection (4).

117BA Unlawfully selling LPG that is used for an excisable LPG use

A person commits an offence if:

- (a) the person intentionally sells LPG; and
(b) the person knows that, or is reckless as to whether, the LPG will be used for an excisable LPG use; and
(c) the LPG is used for an excisable LPG use; and
(d) an LPG remission applies to the LPG at the time of the use.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
(b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty

day (assuming that an LPG remission had not applied to the LPG).

Note 1: The meaning of *apply* is affected by subsection 4(5).

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

117D Unlawfully moving tobacco leaf

- (1) A person must not, without permission under section 44, intentionally move material that is tobacco seed, tobacco plant or tobacco leaf from one place to another knowing, or being reckless as to whether, the material is tobacco seed, tobacco plant or tobacco leaf.

Penalty:

- (a) if the material is tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
- (b) if the material is tobacco leaf—2 years imprisonment or the greater of:
- (a) 500 penalty units; and
- (b) 5 times the amount of duty worked out under the regulations, being the duty that would be payable if the tobacco leaf had been manufactured into excisable goods and entered for home consumption on the penalty day.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A person must not, without permission under section 44, move tobacco seed, tobacco plant or tobacco leaf from one place to another.

Penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2).

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117I Counterfeit tobacco labels

- (1) A person must not intentionally make counterfeit tobacco bale labels.

Penalty: 500 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) A person must not intentionally use a tobacco bale label knowing, or being reckless as to whether, the label is counterfeit.

Penalty: 500 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (3) A person must not use a counterfeit tobacco bale label.

Penalty: 100 penalty units.

- (4) Strict liability applies to subsection (3).

118 Illegal prevention of seizures

All persons to the number of 2 or more assembled with the intention of preventing the seizure of, or for rescuing after seizure any forfeited goods commit an offence punishable on conviction by a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 2 years, or both.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

120 Offences

- (1) A person shall not:
- (i) sell except by authority any excisable goods unlawfully removed from a factory;
 - (iia) sell or offer for sale any goods consisting of beer as defined in the Prefatory Notes to the Schedule to the

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Excise Tariff 1921 being beer that has not been manufactured at a factory that is a brewery for the purposes of Part VIIA;

- (iv) evade payment of any duty which is payable;
- (vi) either:
 - (i) intentionally make a statement to an officer, reckless as to the fact that the statement is false or misleading in a material particular; or
 - (ii) intentionally omit from a statement made to an officer any matter or thing, reckless as to the fact that without the matter or thing the statement is misleading in a material particular;
- (ix) sell or offer for sale any goods upon the pretence that such goods are excisable goods upon which Excise duty has not been paid.

(2) A person who contravenes subsection (1) commits an offence punishable upon conviction:

- (a) in the case of an offence against paragraph (1)(i), (iiia) or (ix), by a fine not exceeding 10 penalty units;
- (b) in the case of an offence against paragraph (1)(iv), by:
 - (i) where the Court can determine the amount of the duty on goods the payment of which would have been evaded by the commission of the offence if the goods had been entered for home consumption on:
 - (A) where the date on which the offence was committed—that date; or
 - (B) where the date is not known to the Court—the date on which the prosecution for the offence was instituted;a fine not exceeding 5 times the amount of that duty and not less than 2 times that amount; or
 - (ii) where the Court cannot determine the amount of that duty, a fine not exceeding 500 penalty units;

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- (d) subject to subsections (3) and (4), in the case of an offence against paragraph (1)(vi), by a penalty not exceeding 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (3) Where a person is convicted of an offence against paragraph (1)(vi) in relation to a statement made, or an omission from a statement made, in respect of the amount of duty payable on particular goods, a Court may, in relation to that offence, impose a penalty not exceeding the sum of 50 penalty units and twice the amount of the duty payable on those goods.

124 Collusive seizures penalty

- (1) Whoever:

Rescuing goods

- (c) Rescues any goods which have been seized or destroys any goods or documents relating thereto with the intention of preventing the seizure thereof or the securing the same or the proof of any offence;

Persons assaulting or obstructing officers

- (d) Assaults or by force resists molests or obstructs or endeavours to intimidate any person acting in aid or assistance of an officer in the execution of the officer's duties;

commits an offence punishable on conviction:

- (f) in the case of an offence against paragraph (c), by a fine not exceeding 50 penalty units or imprisonment for a period not exceeding 2 years, or both; or
- (g) in the case of an offence against paragraph (d), by a fine not exceeding 10 penalty units or imprisonment for a period not exceeding 6 months, or both.
- (2) Notwithstanding that an offence against paragraph (1)(c) is an indictable offence, a Court of summary jurisdiction may hear and

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determine proceedings in respect of such an offence but, where such a Court convicts a person of such an offence, the penalty that the Court may impose is a fine not exceeding 20 penalty units or imprisonment for a term not exceeding one year, or both.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

127A Alternative penalties

If:

- (a) penalties are provided in the alternative for an offence against:
 - (i) a provision of Part III or IV; or
 - (ii) a provision of section 44, 61, 61A, 61C, 117, 117A, 117B, 117BA, 117D or 117I; and
 - (b) a person is convicted of an offence against that provision;
- then the court may impose both penalties on the person.

128 Penalties in addition to forfeitures

All penalties shall be in addition to any forfeiture.

Part XA—Penalty instead of prosecution

129A Purpose and effect of this Part

- (1) The purpose of this Part is to create a system of infringement notices for offences against subsections 117(2) and 117B(2), and for offences against section 295-75 in Schedule 1 to the *Taxation Administration Act 1953*, as an alternative to prosecutions of the offences.
- (2) This Part does not:
 - (a) require an infringement notice to be issued to a person for an offence; or
 - (b) affect the liability of a person to prosecution in respect of an offence if an infringement notice is not issued to the person for the offence; or
 - (c) prevent the issue of 2 or more infringement notices to a person for an offence; or
 - (d) affect the liability of a person to prosecution for an offence if the person does not comply with an infringement notice issued for the offence; or
 - (e) limit or otherwise affect the penalty that may be imposed by a court on a person as a result of a prosecution.

129B When an infringement notice may be issued

If the CEO has reasonable grounds to believe that a person has committed an offence against subsection 117(2) or 117B(2), or against section 295-75 in Schedule 1 to the *Taxation Administration Act 1953*, the CEO may, within 12 months of the commission of the offence, issue an infringement notice to the person for the offence.

Note: For service of the infringement notice, see section 28A of the *Acts Interpretation Act 1901*.

129C Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) state the day on which it is issued; and
 - (b) give brief details of the offence that the person is alleged to have committed, including the day on which the offence was committed and where the offence happened; and
 - (c) state the name of the person to whom it is issued; and
 - (d) state that the penalty payable under the notice is 20 penalty units; and
 - (e) contain the additional information required by subsection (2).

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) The notice must tell the person to whom it is issued that:
 - (a) the person may pay the penalty stated in the notice in any way stated in the notice; and
 - (b) if the person pays the penalty within 28 days after the day on which the notice is issued, or any longer time allowed in writing by the CEO, the person will not be liable to prosecution in court for the offence, unless the notice is withdrawn.

129D Due date for penalty

The penalty becomes due for payment on the day specified in the infringement notice, which must be at least 28 days after the day on which the notice was issued.

129E Effect of payment of penalty

- (1) If the person to whom an infringement notice for an offence is issued pays the penalty specified in the notice:
 - (a) any liability of the person for the offence is discharged; and
 - (b) a prosecution of the offence may not be brought against the person.

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- (2) Subsection (1) does not apply if the notice has been withdrawn and the penalty paid has been refunded.

129F Withdrawal of infringement notice

- (1) The CEO may withdraw an infringement notice that has been issued to a person if the CEO is satisfied that in all the circumstances it is proper to do so.

Note: For service of the withdrawal notice, see section 28A of the *Acts Interpretation Act 1901*.

- (2) If the person has already paid the penalty stated in the notice, the CEO must refund it.
- (3) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
- (a) the person's name and address; and
 - (b) the date of issue of the infringement notice; and
 - (c) that the infringement notice is withdrawn; and
 - (d) that a prosecution of the offence may be brought against the person in a court.

Part XI—Excise prosecutions

133 Meaning of *Excise prosecution*

Excise prosecutions are proceedings by the CEO:

- (a) for the recovery of penalties under any Excise Act; or
- (c) for the condemnation of goods seized as forfeited.

134 Institution of prosecutions

- (1) Excise prosecutions may be instituted by the CEO in the name of the office of the CEO by action, information or other appropriate proceeding:
 - (a) in the Supreme Court of a State;
 - (b) in the Supreme Court of the Australian Capital Territory;
 - (c) in the Supreme Court of the Northern Territory;
 - (d) in a County Court or District Court of a State;
 - (e) in a Local Court, being a Local Court of full jurisdiction, of South Australia or of the Northern Territory; or
 - (f) in a court of summary jurisdiction of a State, of the Australian Capital Territory or of the Northern Territory.
- (2) Where an Excise prosecution for a pecuniary penalty that, but for this section, would exceed 400 penalty units is instituted in a Court referred to in paragraph (1)(d) or (e), the amount of that penalty that exceeds 400 penalty units shall be taken to have been abandoned.
- (4) Where an Excise prosecution for a pecuniary penalty that, but for this subsection, would exceed 200 penalty units is instituted in a Court referred to in paragraph (1)(f), the amount of that penalty that exceeds 200 penalty units shall be taken to have been abandoned.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

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136 Prosecution in accordance with practice rules

Every Excise prosecution in a court referred to in subsection 134(1) may be commenced prosecuted and proceeded with in accordance with any rules of practice (if any) established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

137 State Court practice

Subject to the provisions of this Act the provisions of the law relating to summary proceedings in force in the State or Territory where the proceedings are instituted shall apply to all Excise prosecutions before a Court of summary jurisdiction in a State or Territory, and an appeal shall lie from any conviction order for condemnation or order of dismissal to the Court and in the manner provided by the law of the State or Territory where such conviction or order is made for appeals from convictions or orders of dismissal.

138 Commencement of prosecutions

Excise prosecutions may be instituted at any time within 5 years after the cause thereof.

139 Information etc. to be valid etc. if in words of Act

All informations summonses other originating processes convictions condemnations and warrants shall suffice if the offence or forfeiture is set forth as nearly as may be in the words of this Act.

140 No objections for informality

No objection shall be taken or allowed to any information, summons or other originating process for any alleged defect therein in substance or in form or for any variance between such information, summons or other originating process and the

evidence adduced at the hearing in support thereof, and the Court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable.

141 Conviction not to be quashed

No conviction warrant of commitment or condemnation order or other proceeding matter or thing done or transacted in relation to the execution or carrying out of any Excise Act shall be held void quashed or set aside by reason of any defect therein or want of form and no party shall be entitled to be discharged out of custody on account of such defect.

142 Protection to witnesses

No witness on behalf of the Minister, CEO, Collector or officer in any Excise prosecution shall be compelled to disclose the fact that he or she received or gave any information or the nature thereof or the name of the person who gave such information, and no officer appearing as a witness shall be compelled to produce any reports made or received by him or her confidentially in his or her official capacity or containing confidential information.

143 Defendant a competent witness

- (1) In every Excise prosecution the defendant shall be competent to give evidence.
- (2) In every Excise prosecution except for an indictable offence or for an offence directly punishable by imprisonment the defendant shall be compellable to give evidence.

144 Averment of prosecution sufficient

- (1) In any Excise prosecution the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be prima facie evidence of the matter or matters averred.

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- (2) This section shall apply to any matter so averred although:
 - (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or
 - (b) the matter averred is a mixed question of law and fact but in that case the averment shall be prima facie evidence of the fact only.
- (3) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.
- (4) Subsection (1) does not apply:
 - (a) to any fault element of an offence; or
 - (b) in relation to any offence for which imprisonment is a penalty; or
 - (c) to proceedings for an indictable offence.
- (5) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

145 Proof of proclamations etc.

The production of the *Gazette* containing any proclamation *Gazette* notice or regulation appearing to have been issued or made under this Act or the production of any document certified by the CEO or the Collector to be a true copy of or extract from any such proclamation, *Gazette* notice, or regulation issued or made under this Act shall be prima facie evidence of the issue or making of such proclamation, *Gazette* notice, or regulation, and that the same is in force.

145A Conduct by directors, employees or agents

- (1) Where, in an Excise prosecution in respect of any conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee or agent of the body corporate, being a director,

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employee or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

- (2) Any conduct engaged in on behalf of a body corporate:
- (a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

- (3) Where, in an Excise prosecution in respect of any conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

- (4) Any conduct engaged in on behalf of a person other than a body corporate:
- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose

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of the person and the person's reasons for his or her intention, opinion, belief or purpose.

146 Minimum penalties

No minimum penalty imposed by this Act shall be liable to reduction under any power of mitigation which would but for this section be possessed by the Court.

148 Collector may levy on goods in his or her possession

When any pecuniary penalty adjudged against any person is unpaid the Collector may levy the same by sale of any goods belonging to such person which may then or thereafter be subject to the CEO's control.

150 Imprisonment not to release penalty

No person shall be twice imprisoned upon the same conviction but the suffering of imprisonment for non-payment of a penalty shall not release the penalty or affect the right of the CEO to collect the amount in any manner provided by this Act other than by imprisonment of the person convicted.

151 Conviction to operate as a condemnation

Where the committal of any offence causes a forfeiture of any goods the conviction of any person for such offence shall have effect as a condemnation of the goods in respect of which the offence is committed.

152 Parties may recover costs

In an Excise prosecution, whether commenced before or after the commencement of this section, a court may award costs against a party, and, where an amount of costs is awarded against a party other than the prosecutor, section 148 and any provision of a law of a State or Territory that, by virtue of an Act other than this Act,

applies in relation to the recovery of pecuniary penalties under this Act apply in relation to the recovery of the amount of costs so awarded as if it were a pecuniary penalty adjudged to be paid by the party under this Act.

153 Application of penalties

All penalties and forfeitures recovered under any Excise Act shall be applied to such purposes and in such proportions as the CEO may direct.

Part XII—Disputes as to duty

154 Deposit of duty

If any dispute shall arise as to the amount or rate of duty or as to the liability of goods to duty the owner may deposit with the Collector the amount of duty demanded and thereupon the following consequences shall ensue:

- (1) The owner upon making proper entry shall be entitled to delivery of the goods.
- (2) The deposit shall be deemed the proper duty unless by action commenced by the owner against the Collector within 6 months after making the deposit the contrary shall be determined, in which case any excess of the deposit over the proper duty shall be refunded by the Collector to the owner with 5% per annum interest added.

The provisions of this section shall not apply in cases where the CEO is of opinion that any evasion of this Act has been committed or attempted.

155 Limited dispute rights because of objection against private ruling

- (1) This section applies if there has been a taxation objection under Part IVC of the *Taxation Administration Act 1953* against a private ruling (within the meaning of the *Income Tax Assessment Act 1997*) that relates to:
 - (a) the amount or rate of duty; or
 - (b) the liability of goods to duty.
- (2) The right of the owner to commence an action mentioned in subsection 154(2) of this Act in relation to the goods is limited to a right to bring an action on the grounds that neither were, nor could have been, grounds for the taxation objection against the ruling.

Part XIV—Miscellaneous**159A Jurisdiction of courts**

- (1) A provision of the *Judiciary Act 1903* by which a court of a State is invested with federal jurisdiction has effect, in relation to matters arising under this Act, as if that jurisdiction were so invested without limitation as to locality other than the limitation imposed by section 80 of the Constitution.
- (2) Subject to the Constitution, jurisdiction is conferred on the several courts of the Territories within the limits of their several jurisdictions, other than limits as to locality, with respect to matters arising under this Act.
- (3) The trial of an offence against a provision of this Act not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

160 Alteration of agreements where duty altered

If after any agreement is made for the sale or delivery of excisable goods duty paid any alteration takes place in the duty collected affecting such goods before they are entered for home consumption then in the absence of express written provision to the contrary the agreement shall be altered as follows:

- (a) In the event of the alteration being a new or increased duty the seller after payment of the new or increased duty may add the difference caused by the alteration to the agreed price.
- (b) In the event of the alteration being the abolition or reduction of duty the purchaser may deduct the difference caused by the alteration from the agreed price.
- (c) Any refund or payment of increased duty resulting from the alteration not being finally adopted shall be allowed between the parties as the case may require.

Section 160A

160A Ship's stores and aircraft's stores

- (1) Except as provided by the regulations, ship's stores and aircraft's stores are not liable to Excise duty.
- (2) Goods consisting of ship's stores or aircraft's stores, other than goods of a prescribed kind, may be taken on board an overseas ship or an international aircraft in accordance with an approval granted under section 129 of the *Customs Act 1901* notwithstanding that an entry has not been made and passed under this Act in respect of the goods authorizing the removal of the goods to the ship or aircraft and duty has not been paid on the goods.
- (3) Where duty is payable on goods taken on board an overseas ship as ship's stores, or on board an international aircraft as aircraft's stores, in accordance with an approval granted under section 129 of the *Customs Act 1901* without duty having been paid on the goods, the duty shall, on demand for payment of the duty being made by a Collector to the master or owner of the ship or to the pilot or owner of the aircraft, be paid as if the goods had been entered for home consumption on the day on which the demand was made.
- (4) The owner of a ship, or, if so directed by an officer, the master of a ship, shall, whenever so directed by an officer, give to a Collector a return, in accordance with a form made available by the Collector, relating to the ship's stores of the ship and to goods taken on board the ship as ship's stores.
- (4AA) The owner of an aircraft, or, if so directed by an officer, the pilot of an aircraft, shall, whenever so directed by an officer, give to a Collector particulars of:
 - (a) controlled goods that are aircraft's stores of the aircraft; and
 - (b) controlled goods taken on board the aircraft as aircraft's stores.
- (5) In this Part:

aircraft's stores means stores for the use of the passengers or crew of an international aircraft, or for the service of an international aircraft.

ship's stores means stores for the use of the passengers or crew of an overseas ship, or for the service of an overseas ship.

160B Notification of proposals when House of Representatives not sitting

- (1) The CEO may, at any time when the Parliament is prorogued or the House of Representatives has expired by effluxion of time, has been dissolved or is adjourned otherwise than for a period not exceeding 7 days, publish in the *Gazette* a notice that is intended, within 7 sitting days of the House of Representatives after the date of publication of the notice, to propose in the Parliament an Excise Tariff or Excise Tariff alteration in accordance with particulars specified in the notice and operating as from such time as is specified in the notice, not being:
 - (a) in the case of an Excise Tariff or Excise Tariff alteration that could have the effect of making the duty payable by any person greater than the duty that would, but for that Excise Tariff or Excise Tariff alteration, be payable—a time earlier than the time of publication of the notice; or
 - (b) in any other case—a time earlier than 6 months before the time of publication of the notice.
- (2) Where notice of intention to propose an Excise Tariff or an Excise Tariff alteration has been published in accordance with this section, the Excise Tariff or Excise Tariff alteration shall, for the purposes of this Act (other than section 114) and any other Act, be deemed to be an Excise Tariff or an Excise Tariff alteration, as the case may be, proposed in the Parliament.

162 Rebate

If any rebate is allowed in respect of any excise duty, the allowance shall be made and duty paid as prescribed.

Section 162B

162B Sale by Collector

- (1) Goods and packages, or goods, vessels and packages, which, by section 77F or 39N, the Collector is authorized to sell (in this section referred to as *goods to which this section applies*) shall not be sold except by auction or by tender and after such public notice as is prescribed or, if no such notice is prescribed, after reasonable public notice.
- (2) Goods to which this section applies may be sold either free of duty or subject to duty.
- (3) The conditions on which goods to which this section applies are offered for sale shall include conditions that no bid or tender shall necessarily be accepted and that upon the acceptance of a bid or tender the successful bidder or tenderer shall pay the price in cash forthwith.
- (4) If no bid or tender satisfactory to the Collector is made or received, goods to which this section applies may be re-offered for sale until such a bid or tender is made or received.
- (5) The proceeds of a sale of goods to which this section applies by the Collector shall be applied:
 - (a) in payment of the expenses of the sale; and
 - (b) unless the goods are sold subject to duty, in payment of the duty on the goods; and
 - (c) in payment of the expenses of the removal of the goods in pursuance of section 77F or 39N; and
 - (d) in payment of the warehouse rent and charges and other storage charges (if any) in respect of the goods;in that order, and the balance, if any, shall be paid to the Finance Minister on account of the person entitled to it.
- (6) The rate of duty applicable to goods to which this section applies sold by the Collector is the rate in force at the time of the sale.

162C Review of decisions

- (1) A person who is dissatisfied with a decision that applies to the person may object against the decision, in the manner set out in Part IVC of the *Taxation Administration Act 1953*, if the decision is one of the following:
- (a) a decision of the CEO giving an approval, or refusing to give an approval, under paragraph 58(5)(a);
 - (b) quota orders, and variations of quota orders made by the CEO under section 59A or 59B;
 - (c) a demand made by a Collector under section 60, 77AA, 77FH or 77M;
 - (d) a decision of the Collector under section 61C to refuse to give a permission under that section;
 - (e) a decision of the Collector under section 61C to impose a condition on a permission given under that section;
 - (f) a decision of the Collector under subsection 61C(7) to revoke a permission given under that section;
 - (g) a decision of the CEO to refuse to give an approval under section 77FD or 77FF;
 - (h) a decision of the CEO to specify conditions in an approval given under section 77FD or 77FF;
 - (i) a decision of a Collector under section 78 in relation to a remission, refund or rebate of excise duty;
 - (j) a decision of a Collector under section 79 in relation to a drawback of excise duty;
 - (k) a decision of the CEO under subsection 80(2) demanding repayment of the whole or a part of a rebate of duty;
 - (l) a decision of a Collector for the purposes of section 61D; and
 - (m) a decision of a Collector for the purposes of section 61E; and
 - (n) the decision of the CEO under section 165A as to the amount of duty shortpaid or overpaid.
- (2) If:
- (a) a dispute referred to in section 154 has arisen; and

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- (b) the owner of the goods relating to the dispute has, under that section, deposited the amount of duty demanded by the Collector;
- a person who is dissatisfied with the Collector's decision to demand the amount may object against the decision, in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (3) A person is not to object under subsection (2) except within a period of 6 months after the making of the deposit referred to in that subsection.
- (4) Where the owner of goods has objected under subsection (2):
- (a) consequences referred to in paragraph 154(2) shall not ensue and the owner of the goods is not entitled to institute against the Collector an action referred to in that paragraph; and
- (b) the proper duty payable in respect of the goods shall be deemed to be:
- (i) the amount determined to be the proper duty by, or ascertained to be the proper duty in accordance with:
- (A) the decision of the Tribunal;
- (B) an order of a Court on appeal from that decision; or
- (ii) the amount of the deposit;
- whichever is the less, and where the amount of the deposit exceeds the amount referred to in subparagraph (i), the excess shall be refunded by the Collector to the owner with interest at the rate of 5% per annum.
- (5) In this section, **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Part XV—Regulations and by-laws

163A Interpretation

- (1) In this Part, unless the contrary intention appears:

proposed item of an Excise Tariff means:

- (a) an item of an Excise Tariff proposed in the Parliament; or
- (b) an item of an Excise Tariff as proposed to be altered by an Excise Tariff alteration proposed in the Parliament.

proposed section of an Excise Tariff means:

- (a) a section in an Excise Tariff proposed in the Parliament; or
- (b) a section in an Excise Tariff as proposed to be altered by an Excise Tariff alteration proposed in the Parliament.

- (2) Unless the contrary intention appears, a reference in this Part to an item of an Excise Tariff shall be read as including a reference to a sub-item of such an item, a paragraph of such a sub-item and a subparagraph of such a paragraph.
- (3) Unless the contrary intention appears, a reference in this Part to a section in an Excise Tariff shall be read as including a reference to a subsection of such a section, a paragraph of such a section or subsection, a subparagraph of such a paragraph and a sub-subparagraph of such a subparagraph.

164 Regulations

The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Excise and, in particular, prescribing penalties not exceeding a fine of 3 penalty units for an offence against the regulations.

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Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

164A Effect of regulations relating to condensate

- (1) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to regulations made for the purposes of this Act in relation to condensate.
- (2) Subsection 12(1A) (retrospective commencement of legislative instruments) of the *Legislation Act 2003* does not apply to regulations that create, modify or otherwise affect a provision that makes a person liable to an offence or civil penalty.

165 CEO may make by-laws

- (1) Where:
 - (a) an item of an Excise Tariff, or a proposed item of an Excise Tariff, is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; or
 - (b) under an item of an Excise Tariff, or a proposed item of an Excise Tariff, any matter or thing is expressed to be as prescribed or defined by by-law;the CEO may, subject to this Part, make by-laws for the purposes of that item or proposed item.
- (2) Where in a section of an Excise Tariff, or a proposed section of an Excise Tariff, any matter or thing is expressed to be as prescribed, defined or declared by by-law, the CEO may, subject to this Part, make by-laws for the purposes of that section or proposed section.

165A By-laws prescribing onshore fields or exempt offshore fields may be revoked within 3 years

- (1) If:
 - (a) for the purposes of the Excise Tariff, the CEO has made, or is taken to have made, by-laws under section 165 prescribing 2

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or more fields as onshore fields or exempt offshore fields;
and

- (b) on the basis of subsequent information, the Resources Minister is satisfied that the fields as prescribed are actually parts of a single field;

that Minister may, within 3 years after those by-laws or the earliest of those by-laws comes into effect, make a by-law (***replacement by-law***) that:

- (c) revokes the original by-laws from the day each of those by-laws came into effect; and
- (d) substitutes for the original by-laws a new by-law that, with effect from the day the revoked by-laws or the earliest of the revoked by-laws came into effect, prescribes the single field as an onshore field or an exempt offshore field.

(2) If:

- (a) for the purposes of the Excise Tariff, the CEO has made, or is taken to have made, a by-law under section 165 prescribing a field as an onshore field or an exempt offshore field; and
- (b) on the basis of subsequent information, the Resources Minister is satisfied that the field as so prescribed is actually 2 or more separate fields;

that Minister may, within 3 years after that by-law comes into effect, make by-laws (***replacement by-laws***):

- (c) of which one:
- (i) revokes the original by-law from the day that by-law came into effect; and
- (ii) substitutes for the original by-law a new by-law that, with effect from that day, prescribes one of the separate fields as an onshore field or an exempt offshore field;
and
- (d) of which the other, or each of the others, prescribes the other separate field or each of the other separate fields, with effect from that day, as an onshore field or an exempt offshore field.

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- (3) Within 90 days after the Resources Minister makes a replacement by-law under subsection (1), the CEO must, having regard to the information (if any) provided by the producer and to other relevant information:
 - (a) work out the amount of duty (if any) that is shortpaid by the relevant producer to the Commonwealth having regard to the replacement by-law; and
 - (b) notify the relevant producer, in writing, of that amount.
- (4) Within 90 days after the Resources Minister makes replacement by-laws under subsection (2), the CEO must, having regard to the information (if any) provided by the producer and to other relevant information:
 - (a) work out the amount of duty (if any) overpaid by the relevant producer to the Commonwealth having regard to those replacement by-laws; and
 - (b) notify the relevant producer, in writing, of that amount.
- (5) If a replacement by-law made under subsection (1) is published in the *Gazette*, no action lies against the relevant producer for recovery of the amount of duty shortpaid until 60 days after notification under subsection (3) of the duty shortpaid.
- (6) If an amount is notified under subsection (3):
 - (a) the amount is, subject to subsections (13) and (14), payable by the relevant producer to the Commonwealth within 60 days after it is so notified; and
 - (b) if that amount is paid during that period, no interest is payable on that amount or on any part of that amount.
- (7) If replacement by-laws made under subsection (2) are published in the *Gazette*, no action lies against the Commonwealth for recovery of the amount of duty overpaid until 60 days after notification under subsection (4) of the duty overpaid.

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- (8) If an amount is notified under subsection (4):
- (a) the amount is, subject to subsections (13) and (14), payable by the Commonwealth to the relevant producer within 60 days after the day so notified; and
 - (b) if that amount is paid during that period, no interest is payable on that amount or on any part of that amount.
- (9) If, within 60 days after an amount is notified to a relevant producer under subsection (3), the producer fails to pay that amount to the Commonwealth, interest may be charged only with effect from the day on which the replacement by-law was published in the *Gazette*.
- (10) If, within 60 days after an amount is notified to a relevant producer under subsection (4), the Commonwealth fails to pay that amount to the producer, interest may be charged only with effect from the day on which the replacement by-laws were published in the *Gazette*.
- (11) Nothing in this section prevents the Finance Minister allowing a relevant producer to pay the amount notified to the relevant producer under subsection (3) in accordance with rules (if any) made for the purposes of section 63 of the *Public Governance, Performance and Accountability Act 2013* and, if the Minister so allows, subsections (6) and (9) do not apply.
- Note: The CEO also has powers to collect and recover the duty under Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.
- (12) In allowing for the payment of an amount in instalments, the Finance Minister may require the payment of interest on amounts remaining unpaid from time to time after the day on which the replacement by-law was published, in the *Gazette*.
- (13) A relevant producer:
- (a) who has been notified of an amount of duty shortpaid under subsection (3) or an amount of duty overpaid under subsection (4); and

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- (b) who is of the opinion that the decision as to that amount is incorrect;
may apply to the Administrative Appeals Tribunal under paragraph 162C(1)(n) for review of the decision.
- (14) If a relevant producer applies to the Administrative Appeals Tribunal for review of the decision as to the amount of duty shortpaid or overpaid:
- (a) the period starting with the application and ending with the final determination by the Administrative Appeals Tribunal or by a Court on appeal from the Tribunal of the amount of duty shortpaid or overpaid is to be disregarded in working out, for the purposes of subsection (5), (6), (7) or (8), whether 60 days have passed since that amount was notified; and
 - (b) if it is determined, or ultimately determined, that the amount of duty shortpaid or overpaid is more or less than the amount notified by the CEO, the notification by the CEO is to be treated as if it were, and had always been, a notification of the amount determined or ultimately determined by the Tribunal or Court.

166 By-laws specifying goods

The CEO may specify in a by-law made for the purposes of an item, or a proposed item, of an Excise Tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law:

- (a) the goods, or the class or kind of goods, to which that item or proposed item applies;
- (b) the conditions, if any, subject to which that item or proposed item applies to those goods or to goods included in that class or kind of goods; and
- (c) such other matters as are necessary to determine the goods to which that item or proposed item applies.

167 By-laws for purposes of repealed items

The CEO may make a by-law for the purposes of an item of an Excise Tariff notwithstanding that the item has been repealed before the making of the by-law, but the by-law shall not apply to goods entered for home consumption after the repeal of that item.

168 Publication of by-laws

A by-law made under this Part:

- (a) shall be published in the *Gazette*, and has no force until so published; and
- (b) shall, subject to this Part:
 - (i) take effect, or be deemed to have taken effect, from the date of publication, or from a date (whether before or after the date of publication) specified by or under the by-law; or
 - (ii) have effect, or be deemed to have had effect, for such period (whether before or after the date of publication) as is specified by or under the by-law.

169 Retrospective by-laws not to increase duty

This Part does not authorize the making by the CEO of a by-law which has the effect of imposing duty, in relation to goods entered for home consumption before the date on which the by-law is published in the *Gazette*, at a rate higher than the rate of duty payable in respect of those goods on the day on which those goods were entered for home consumption.

170 By-laws for purposes of proposals

Where:

- (a) a by-law is made for the purposes of an Excise Tariff proposed in the Parliament or of an Excise Tariff as proposed to be altered by an Excise Tariff alteration proposed in the Parliament; and

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(b) the proposed Excise Tariff becomes an Excise Tariff or the proposed alteration is made, as the case may be; the by-laws shall have effect for the purposes of that Excise Tariff or of that Excise Tariff as so altered, as the case may be, as if the by-law had been made for those purposes and the proposed Excise Tariff or the Excise Tariff as proposed to be altered, as the case may be, had been in force on the day on which the by-law was made.

Schedules

Schedule I—Australia

Security under the Excise Act 1901

By this security the Subscribers are, pursuant to the *Excise Act 1901*, bound to the CEO (as defined in that Act) in the sum of—*[here insert amount or mode of ascertaining amount intended to be paid in default of compliance with condition]*—subject only to this condition that if—*[here insert the condition of the security]*—then this security shall be thereby discharged.*

Dated the day of 20 .

Names and Descriptions of Subscribers	Signatures of Subscribers	Signatures of Witnesses

* NOTE—If liability is not intended to be joint and several and for the full amount, here state what is intended, as, for example, thus—“The liability of the subscribers is joint only,” or “the liability of (mentioning subscriber) is limited to (here state amount of limit of liability or mode of ascertaining limit).”

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous (prev...) = previously
def = definition(s)	Pt = Part(s)
Dict = Dictionary	r = regulation(s)/rule(s)
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
ed = editorial change	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislation	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LA = <i>Legislation Act 2003</i>	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment can be given effect	SR = Statutory Rules
(md not incorp) = misdescribed amendment cannot be given effect	Sub-Ch = Sub-Chapter(s)
mod = modified/modification	SubPt = Subpart(s)
No. = Number(s)	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Excise Act 1901	9, 1901	5 Oct 1901	7 Oct 1901 (s 2 and gaz 1901, No 51, p 167)	
Excise Act 1918	26, 1918	7 Nov 1918	7 Nov 1918	—
Excise Act 1923	8, 1923	11 Aug 1923	11 Aug 1923	—
Excise Act 1934	44, 1934	4 Aug 1934	4 Aug 1934	—
Excise Act 1942	16, 1942	18 May 1942	18 May 1942 (s 2)	—
Excise Act 1947	88, 1947	11 Dec 1947	8 Jan 1948	—
Excise Act 1949	46, 1949	27 Oct 1949	1 Apr 1950 (s 2 and gaz 1950, No 18, p 723)	s 3(2)
Excise Act 1952	55, 1952	30 Sept 1952	28 Oct 1952	—
Excise Act 1957	10, 1957	24 Apr 1957	24 Apr 1957 (s 2)	—
Excise Act 1958	49, 1958	30 Sept 1958	s 3 and 5: 17 Sept 1959 (s 2(2) and gaz 1959, No 57, p 3278) Remainder: 30 Sept 1958 (s 2(1))	s 8(2) and 9
Excise Act 1962	37, 1962	28 May 1962	28 May 1962 (s 2)	s 7
Excise Act 1963	49, 1963	16 Oct 1963	16 Oct 1963 (s 2)	—
Excise Act 1965	139, 1965	18 Dec 1965	14 Feb 1966 (s 2)	—
Statute Law Revision (Decimal Currency) Act 1966	93, 1966	29 Oct 1966	First and Second Sch: 1 Dec 1966 (s 2(1))	—
Excise Act 1968	15, 1968	16 May 1968	13 June 1968	—
Excise Act (No. 2) 1968	105, 1968	2 Dec 1968	s 1(1), (2), (4), 2, 25 and 41: 2 Dec 1968 (s 2(1)) s 3–24 and 26–40: 1 Oct 1969 (s 2(2))	s 41
Excise Act 1972	23, 1972	17 May 1972	1 July 1972 (s 2)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Excise Act 1973	24, 1973	18 Apr 1973	18 Apr 1973 (s 2)	—
Excise Act (No. 2) 1973	145, 1973	22 Nov 1973	22 Aug 1973 (s 2)	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	s 9(1) and 10
Excise Act 1974	29, 1974	1 Aug 1974	1 Aug 1974 (s 2)	—
Administrative Changes (Consequential Provisions) Act 1976	91, 1976	20 Sept 1976	s 4: 20 Sept 1976 (s 2(1)) Sch: 22 Dec 1975 (s 2(7))	s 4
Administrative Changes (Consequential Provisions) Act 1978	36, 1978	12 June 1978	s 8 and Sch 1: 12 June 1978 (s 2)	s 8
Excise Amendment Act 1978	110, 1978	21 Sept 1978	16 Aug 1978 (s 2)	s 4
Excise Amendment Act 1979	11, 1979	13 Mar 1979	1 Feb 1980 (s 2 and gaz 1979, No S268)	—
Jurisdiction of Courts (Miscellaneous Amendments) Act 1979	19, 1979	28 Mar 1979	s 124: 28 Mar 1979 (s 2(1)) Sch: 15 May 1979 (s 2(3) and gaz 1979, No S86)	s 124
Excise Amendment Act (No. 2) 1979	50, 1979	14 June 1979	14 June 1979 (s 2)	—
Australian Federal Police (Consequential Amendments) Act 1979	155, 1979	28 Nov 1979	Sch: 19 Oct 1979 (s 2(1))	—
Excise Amendment Act (No. 3) 1979	165, 1979	29 Nov 1979	1 Mar 1982 (s 2 and gaz 1982, No S36)	—
Excise Amendment Act 1980	42, 1980	23 May 1980	23 May 1980 (s 2)	s 3(2)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Federal Police (Consequential Amendments) Act 1980	70, 1980	28 May 1980	Sch: 28 May 1980 (s 2)	—
Statute Law Revision Act 1981	61, 1981	12 June 1981	s 55 and Sch 1: 12 June 1981 (s 2(1))	s 55(2)
Excise Amendment Act 1981	65, 1981	12 June 1981	10 July 1981	s 2(2) and (3)
Off-shore Installations (Miscellaneous Amendments) Act 1982	51, 1982	16 June 1982	s 29–32: 14 July 1982 (s 2(1))	—
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982	80, 1982	22 Sept 1982	s 280(2), (3) and Sch 12: 22 Sept 1982 (s 2(1))	s 280(2) and (3)
Customs and Excise Amendment Act 1982	81, 1982	23 Sept 1982	s 73: 26 Apr 1983 (s 2(2) and gaz 1983, No S80) s 74–76: 2 Dec 1985 (s 2(2) and gaz 1985, No S490)	—
as amended by				
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	Sch 1: 2 Dec 1985 (s 2(5)(b))	—
Customs and Excise Legislation Amendment Act 1985	40, 1985	30 May 1985	s 30: 2 Dec 1985 (s 2(9)) s 31: 1 Apr 1985 (s 2(8))	—
Diesel Fuel Taxes Legislation Amendment Act 1982	108, 1982	5 Nov 1982	s 8–16 and 22: 8pm (A.C.T.) 17 Aug 1982 (s 2)	s 11(2) and 22

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	Sch 2: 18 July 1983 (s 2(1))	—
as amended by				
Statute Law (Miscellaneous Provisions) Act (No. 2) 1983	91, 1983	22 Nov 1983	Sch 1: 18 July 1983 (s 2(13)(b))	—
Customs and Excise Amendment Act 1983	101, 1983	23 Nov 1983	s 7 and 9: 8pm (A.C.T.) 23 Aug 1983 (s 2(1)) s 8 and 11: 23 Nov 1983 (s 2(2)) s 10 and 12: 2 July 1983 (s 2(5))	s 9(2)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	s 5(1) and Sch: 23 July 1984 (s 2(1))	s 5(1)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	s 6(2) and Sch 1: 22 Nov 1984 (s 2(1))	s 6(2)
Customs Administration (Transitional Provisions and Consequential Amendments) Act 1985	39, 1985	29 May 1985	s 4 and Sch: 10 June 1985 (s 2)	s 4

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs and Excise Legislation Amendment Act 1985	40, 1985	30 May 1985	s 33, 37, 39–43, 48 and Sch 1: 27 June 1985 (s 2(1)) s 34, 36 and 44: repealed before commencing (s 2(3)) s 35: 29 Nov 1985 (s 2(3) and gaz 1985, No S490) s 38: 1 July 1984 (s 2(10)) s 45 and 46: 23 July 1984 (s 2(11))	s 48
as amended by				
Customs and Excise Legislation Amendment Act 1986	34, 1986	3 June 1986	s 20 and 21: 27 June 1985 (s 2(4))	—
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	Sch: 1 Jan 1990 (s 2(4))	—
Customs and Excise Legislation Amendment Act (No. 2) 1985	175, 1985	16 Dec 1985	s 17: 2 Dec 1985 (s 2(7)) s 18 and 21: 1 May 1986 (s 2(2) and gaz 1986, No S182) s 19 and 20: 1 Nov 1985 (s 2(5))	s 19(2) and 20(2)
Customs Administration (Transitional Provisions and Consequential Amendments) Act 1986	10, 1986	13 May 1986	s 4 and Sch: 13 May 1986 (s 2(1))	s 4
Customs and Excise Legislation Amendment Act 1986	34, 1986	3 June 1986	s 23: never commenced (s 2(5)) s 24: 3 June 1986 (s 2(1))	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs and Excise Legislation Amendment Act (No. 2) 1986	149, 1986	11 Dec 1986	s 12(2) and 13–15: 11 Dec 1986 (s 2(1)) s 11: 21 Oct 1986 (s 2(3)) s 12(1): 1 Oct 1983 (s 2(4)) s 16: 8 Jan 1987 (s 2(2))	s 12(2)
Customs and Excise Legislation Amendment Act 1987	81, 1987	5 June 1987	s 3(3) and 13–16: 1 Aug 1987 (s 2(4) and gaz 1987, No S135)	s 3(3) and 16
Sea Installations (Miscellaneous Amendments) Act 1987	104, 1987	6 Nov 1987	s 25–28: 15 Oct 1987 (s 2(1))	s 28
Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988	99, 1988	2 Dec 1988	Sch: 2 Dec 1988 (s 2)	—
Customs and Excise Legislation Amendment Act 1989	23, 1989	5 May 1989	s 14: 1 July 1989 (s 2)	—
Customs and Excise Legislation Amendment Act (No. 2) 1989	24, 1989	5 May 1989	s 30, 33 and 39–43: 5 May 1989 (s 2(1)) s 31 and 32: 1 July 1989 (s 2(5)) s 34–38: 1 Feb 1989 (s 2(6))	s 42(2)
Customs and Excise Legislation Amendment Act (No. 3) 1989	78, 1989	21 June 1989	s 14, 15, 17, 19 and 20: 21 June 1989 (s 2(1)) s 16 and 18: 19 July 1989 (s 2(3))	s 15(2), 17(2) and 20

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	s 26(1)(b) and (c): 1 July 1989 (s 2(2)) s 26(1)(a), (d), (e), (2) and 27–32: 1 Jan 1990 (s 2(4))	s 26(2), 28(2) and 32(2)
Customs and Excise Legislation Amendment Act 1990	111, 1990	21 Dec 1990	s 47: 21 Dec 1990 (s 2(2)) s 40–46: 1 June 1991 (s 2(1) and gaz 1991, No S137)	s 42(2)
Petroleum Resource Rent Legislation Amendment Act 1991	80, 1991	26 June 1991	s 24, 25, 32 and 37: 1 July 1991 (s 2)	s 32 and 37
Customs and Excise Legislation Amendment Act 1992	34, 1992	20 May 1992	s 51, 52 and 56: 20 May 1992 (s 2(1)) s 53–55 and 57: 17 June 1992 (s 2(2))	—
Territories Law Reform Act 1992	104, 1992	30 June 1992	Sch 4: 1 July 1992 (s 2(3))	—
Customs and Excise Legislation Amendment Act 1993	113, 1993	24 Dec 1993	s 9: 24 Dec 1993 (s 2(1)) s 14 and 15(c): 1 Jan 1994 (s 2(2)) s 8, 10–13 and 17: 1 Apr 1994 (s 2(3) and gaz 1994, No S112) s 15(a), (b) and 16: 24 June 1994 (s 2(4))	—
as amended by				
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 3 (item 13): 24 Dec 1993 (s 2(3))	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs, Excise and Bounty Legislation Amendment Act 1995	85, 1995	1 July 1995	s 18, 20, Sch 7 and Sch 9 (items 69–73): 1 July 1995 (s 2(1), (5))	s 18 and 20
as amended by				
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 3 (item 14): 1 July 1995 (s 2(3))	—
Customs and Excise Legislation Amendment Act 1995	87, 1995	1 July 1995	s 5 and Sch 2: 1 July 1995 (s 2(1), (3))	s 5
as amended by				
Customs and Excise Legislation Amendment Act (No. 1) 1996	21, 1996	28 June 1996	Sch 1 (items 2–7, 25): 1 July 1995 (s 2)	—
Customs and Excise Legislation Amendment Act (No. 1) 1997	97, 1997	30 June 1997	Sch 2 (items 1–5, 7–26, 28): 30 Dec 1997 (s 2(3), (5)) Sch 2 (item 6, 27): 1 Aug 1997 (s 2(2) and gaz 1997, No GN30)	Sch 2 (items 27, 28)
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 2 (item 735): 1 Jan 1998 (s 2(2))	—
Customs and Excise Legislation Amendment Act (No. 2) 1997	167, 1997	11 Nov 1997	Sch 1 (items 3–18): 31 Jan 1998 (s 2)	Sch 1 (items 10, 15)
Customs and Excise Legislation Amendment Act (No. 1) 1998	8, 1998	31 Mar 1998	Sch 1 (items 10, 11): 30 Dec 1997 (s 2(4), (5))	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs and Excise Amendment (Diesel Fuel Rebate Scheme) Act 1999	87, 1999	8 July 1999	Sch 2: 1 July 2000 (s 2)	—
as amended by				
A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999	177, 1999	22 Dec 1999	Sch 6 (item 7): 1 July 2000 (s 2(8))	—
A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999	177, 1999	22 Dec 1999	Sch 6 (items 8–11): 1 July 2000 (s 2(8))	—
Taxation Laws Amendment Act (No. 9) 1999	181, 1999	22 Dec 1999	Sch 1 (item 2): 1 July 2000 (s 2)	—
Excise Amendment (Alcoholic Beverages) Act 2000	85, 2000	30 June 2000	1 July 2000 (s 2)	—
A New Tax System (Tax Administration) Act (No. 2) 2000	91, 2000	30 June 2000	Sch 4B (items 6–10): 1 July 2000 (s 3(5A))	—
as amended by				
Taxation Laws Amendment Act (No. 8) 2000	156, 2000	21 Dec 2000	Sch 7 (item 12): 1 July 2000 (s 2(6))	—
Product Stewardship (Oil) (Consequential Amendments) Act 2000	105, 2000	6 July 2000	Sch 1 (item 1): 6 July 2000 (s 2(1))	—
Excise Amendment (Compliance Improvement) Act 2000	115, 2000	7 Sept 2000	7 Sept 2000 (s 2)	s 4, Sch 1 (item 62) and Sch 2

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Petroleum Excise Amendment (Measures to Address Evasion) Act 2000	125, 2000	26 Oct 2000	Sch 2: 26 Oct 2000 (s 2)	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 181–186, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
as amended by				
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 2 (item 7): 24 May 2001 (s 2(1) item 36)	—
Taxation Laws Amendment (Excise Arrangements) Act 2001	25, 2001	6 Apr 2001	Sch 1 and Sch 2 (items 1–68, 70–105, 107, 108, 110–123): 4 May 2001 (s 2(1)(b)) Sch 2 (items 69, 106, 109): never commenced (s 2(2)(a))	Sch 2 (items 5, 13, 17, 22, 113, 117)
Corporations (Repeals, Consequential and Transitional) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (items 176–178): 15 July 2001 (s 2(3))	s 4–14
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001	146, 2001	1 Oct 2001	s 4 and Sch 4 (items 12–32): 15 Dec 2001 (s 2(1))	s 4
Fuel Legislation Amendment (Grant and Rebate Schemes) Act 2001	165, 2001	1 Oct 2001	Sch 1 (item 7): 1 Oct 2001 (s 2(1))	—
Diesel Fuel Rebate Scheme Amendment Act 2002	46, 2002	29 June 2002	Sch 1 (items 6–10): 29 June 2002 (s 2)	Sch 1 (item 10)
Excise Laws Amendment Act (No. 1) 2002	107, 2002	2 Dec 2002	Sch 1 (items 4–6): 14 May 2002 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Enhancement Act 2003	41, 2003	3 June 2003	Sch 3 (item 33): 4 May 2001 (s 2(1) item 22) Sch 3 (item 42): 3 June 2003 (s 2(1) item 1)	Sch 3 (item 42)
Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003 as amended by Tax Laws Amendment (2004 Measures No. 7) Act 2005	54, 2003 41, 2005	27 June 2003 1 Apr 2005	Sch 4: 1 July 2003 (s 2) Sch 10 (item 245): 1 July 2003 (s 2(1) item 7)	Sch 4 (item 18) —
Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003	122, 2003	5 Dec 2003	Sch 2 (items 1–3): 5 Dec 2003 (s 2(1) item 2)	Sch 2 (item 3)
Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Act 2004	42, 2004	21 Apr 2004	Sch 2 (items 1–3): 18 Sept 2003 (s 2(1) item 4) Sch 2 (items 4–9): 21 Apr 2004 (s 2(1) item 5)	—
Excise and Other Legislation Amendment (Compliance Measures) Act 2004	91, 2004	29 June 2004	s 4: 29 June 2004 (s 2(1) item 1) Sch 1 (items 4–9): 29 Dec 2004 (s 2(1) item 4) Sch 2–4: 30 June 2004 (s 2(1) item 5)	s 4
Tax Laws Amendment (2006 Measures No. 2) Act 2006	58, 2006	22 June 2006	Sch 7 (items 232–236): 22 June 2006 (s 2(1) item 24)	—
Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006	74, 2006	26 June 2006	Sch 1 (items 16–91, 102–109): 1 July 2006 (s 2(1) items 2, 4)	Sch 1 (items 102–109)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Sch 4 (item 13): 15 Mar 2007 (s 2(1) item 44)	—
Excise Legislation Amendment (Condensate) Act 2008	108, 2008	18 Oct 2008	Sch 1 (items 1–3, 13(1), 14, 15): 18 Oct 2008 (s 2(1) item 2)	Sch 1 (items 13(1), 14, 15)
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Sch 2 (items 31–33): 23 May 2009 (s 2)	—
Tax Laws Amendment (2009 Measures No. 4) Act 2009	88, 2009	18 Sept 2009	Sch 5 (items 1–11): 18 Sept 2009 (s 2(1) item 7)	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Sch 10 (item 19): 20 Feb 2010 (s 2(1) item 13)	—
Tax Laws Amendment (2009 Measures No. 6) Act 2010	19, 2010	24 Mar 2010	Sch 6: 24 Mar 2010 (s 2(1) item 15)	—
Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010	74, 2010	28 June 2010	Sch 2 (item 6): 1 July 2010 (s 2(1) item 3)	—
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Sch 2 (items 16, 17, 126): 17 Dec 2010 (s 2(1) item 2)	Sch 2 (item 126)
Human Services Legislation Amendment Act 2011	32, 2011	25 May 2011	Sch 4 (items 618–620): never commenced (s 2(1) item 4)	—
Taxation of Alternative Fuels Legislation Amendment Act 2011	68, 2011	29 June 2011	Sch 1 (items 1–14): 1 Dec 2011 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tax Laws Amendment (2011 Measures No. 8) Act 2011	136, 2011	29 Nov 2011	Sch 4 (items 1–4): 1 Dec 2011 (s 2(1) item 7)	Sch 4 (item 4)
Clean Energy (Excise Tariff Legislation Amendment) Act 2011	156, 2011	4 Dec 2011	Sch 2 (item 1): 1 July 2012 (s 2(1) item 3)	—
Excise Amendment (Reducing Business Compliance Burden) Act 2012	36, 2012	15 Apr 2012	Sch 1 (items 1–25, 28): 15 Apr 2012 (s 2(1) items 2–6)	Sch 1 (item 28)
Tax Laws Amendment (2012 Measures No. 3) Act 2012	58, 2012	21 June 2012	Sch 2 (items 1–3, 5): 21 June 2012 (s 2(1) item 3)	Sch 2 (item 5)
Clean Energy (Excise Tariff Legislation Amendment) Act 2012	81, 2012	28 June 2012	Sch 1 (item 1): 1 July 2012 (s 2(1) item 2)	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 1 (item 35): 29 June 2013 (s 2(1) item 2)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 12 (items 157, 158) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Tax and Superannuation Laws Amendment (2014 Measures No. 7) Act 2015	21, 2015	19 Mar 2015	Sch 7 (items 7,8): 20 Mar 2015 (s 2(1) item 15)	—
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (items 66–69), Sch 6 (item 71) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 9
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Act 2015	81, 2015	26 June 2015	Sch 1 (items 7, 8, 11, 25–28): 1 July 2015 (s 2(1) item 1)	Sch 1 (items 11, 25–28)
Fuel Indexation (Road Funding) Act 2015	102, 2015	30 June 2015	Sch 2: 10 Nov 2014 (s 2(1) item 5)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 200–202): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 161, 386): 10 Mar 2016 (s 2(1) item 6)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Law and Justice Legislation Amendment (Northern Territory Local Court) Act 2016	26, 2016	23 Mar 2016	Sch 1 (items 17, 34, 35): 1 May 2016 (s 2(1) item 2)	Sch 1 (items 34, 35)
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 5 (item 44): 1 July 2016 (s 2(1) item 7)	—
Statute Law Revision (Spring 2016) Act 2016	67, 2016	20 Oct 2016	Sch 1 (items 18–26): 17 Nov 2016 (s 2(1) item 2)	—
Legislation Amendment (Sunsetting Review and Other Measures) Act 2018	78, 2018	24 Aug 2018	Sch 2 (item 14): 25 Aug 2018 (s 2(1) item 5)	—
Treasury Laws Amendment (Illicit Tobacco Offences) Act 2018	82, 2018	24 Aug 2018	Sch 1 (items 1, 2, 7–25): 25 Aug 2018 (s 2(1) item 2)	Sch 1 (item 25)
Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Act 2018	141, 2018	29 Nov 2018	Sch 3 (items 1–8, 10): 1 Jan 2019 (s 2(1) item 4)	Sch 3 (item 10)
Treasury Laws Amendment (2019 Measures No. 1) Act 2019	49, 2019	5 Apr 2019	Sch 2: 6 Apr 2019 (s 2(1) item 9)	Sch 2 (item 4)
Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020	92, 2020	14 Oct 2020	Sch 3 (items 8–12, 40): 1 Jan 2021 (s 2(1) item 7)	Sch 3 (item 40)
Treasury Laws Amendment (2021 Measures No. 5) Act 2021	127, 2021	7 Dec 2021	Sch 2 (items 47–49): 8 Dec 2021 (s 2(1) item 3)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023	40, 2023	28 June 2023	Sch 4 (items 8–13) and Sch 5: 1 July 2023 (s 2(1) item 5)	Sch 5 (item 4)
Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023	69, 2023	14 Sept 2023	Sch 1 (item 80): 15 Sept 2023 (s 2(1) item 2)	—
Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024	38, 2024	31 May 2024	Sch 1 (items 24–26, 60): <u>awaiting commencement</u> (s 2(1) item 2)	—
Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024	51, 2024	28 June 2024	Sch 1 (items 72–163, 172, 179–185, 186, 188, 190, 191): 1 July 2024 (s 2(1) item 1)	Sch 1 (items 172, 186, 190, 191)

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part I	
s 3.....	rs No 49, 1958 am No 37, 1962; No 105, 1968 rep No 216, 1973
s 4.....	am No 26, 1918; No 16, 1942; No 10, 1957; No 49, 1958; No 49, 1963; No 15, 1968; No 105, 1968; No 216, 1973; No 29, 1974; No 91, 1976; No 155, 1979; No 42, 1980; No 70, 1980; No 80, 1982; No 81, 1982; No 39, 1983; No 72, 1984; No 39, 1985; No 10, 1986; No 23, 1989; No 24, 1989; No 78, 1989; No 5, 1990; No 111, 1990; No 104, 1992; No 113, 1993; No 85, 1995; No 97, 1997; No 167, 1997; No 87, 1999; No 85, 2000; No 115, 2000; No 25, 2001; No 54, 2003; No 74, 2006; No 33, 2009; No 88, 2009; No 68, 2011; No 36, 2012; No 33, 2016; No 82, 2018; No 141, 2018; No 92, 2020; No 40, 2023; No 51, 2024
s 4AAA.....	ad No 113, 1993
s 4AA.....	ad No 5, 1990 am No 85, 1995 rep No 25, 2001
s 4A.....	ad No 104, 1987
s 5.....	am No 216, 1973; No 21, 2015
s 5A.....	ad No 105, 1968 rep No 115, 2000
s 6.....	am No 8, 1923 rs No 105, 1968
s 6A.....	ad No 115, 2000
s 6B.....	ad No 146, 2001
Part II	
s 7.....	rs No 39, 1985 am No 85, 1995; No 25, 2001; No 145, 2010
s 8.....	am No 51, 1982

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Endnote 4—Amendment history

Provision affected	How affected
	rs No 39, 1985
	am No 5, 1990; No 25, 2001
s 9.....	rep No 39, 1985
s 10.....	rep No 39, 1985
s 11.....	rep No 39, 1985
s 12.....	am No 88, 1947; No 15, 1968; No 39, 1983
	rep No 39, 1985
s 12A.....	ad No 15, 1968
	am No 216, 1973; No 29, 1974; No 39, 1983
	rep No 25, 2001
s 13.....	rep No 25, 2001
s 14.....	rep No 115, 2000
s 15.....	rs No 16, 1942
	am No 49, 1963; No 39, 1983; No 115, 2000; No 42, 2004; No 58, 2006
s 16.....	am No 25, 2001; No 91, 2004
s 17.....	rs No 26, 1918; No 10, 1957
	am No 39, 1983
s 18.....	am No 85, 1995
s 19.....	am No 39, 1983; No 85, 1995; No 25, 2001
s 20.....	am No 115, 2000
s 21.....	am No 39, 1983; No 25, 2001
s 22.....	am No 25, 2001
s 23.....	rep No 115, 2000
s 24.....	am No 165, 1984; No 85, 2000; No 25, 2001
	rs No 74, 2006
	am No 33, 2009; No 41, 2015
Part III	
Part III.....	rs No 115, 2000

Endnote 4—Amendment history

Provision affected	How affected
Division 1	
s 25.....	am No 26, 1918; No 93, 1966; No 105, 1968; No 39, 1983; No 40, 1985 rs No 115, 2000
s 26.....	am No 105, 1968; No 39, 1983 rs No 115, 2000
s 27.....	am No 93, 1966; No 105, 1968; No 39, 1983; No 40, 1985 rs No 115, 2000 am No 51, 2024
Division 2	
s 28.....	am No 29, 1974 rs No 115, 2000
s 29.....	am No 93, 1966; No 105, 1968; No 39, 1983; No 40, 1985 rs No 115, 2000
s 30.....	am No 93, 1966; No 105, 1968; No 39, 1983; No 40, 1985; No 51, 2024 rs No 115, 2000
s 31.....	rs No 115, 2000 am No 51, 2024
s 32.....	rs No 55, 1952 am No 105, 1968; No 39, 1983 rs No 115, 2000 rep No 74, 2006
Division 3	
s 33.....	rs No 55, 1952 am No 93, 1966; No 105, 1968; No 39, 1983; No 40, 1985 rs No 115, 2000
s 34.....	rs No 115, 2000
s 35.....	am No 93, 1966; No 105, 1968; No 39, 1983; No 40, 1985 rs No 115, 2000 am No 51, 2024

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 36.....	rep No 26, 1918 ad No 115, 2000 am No 51, 2024
s 37.....	rs No 26, 1918 am No 29, 1974 rs No 115, 2000 rep No 74, 2006
s 38.....	rep No 115, 2000
Part IV	
Part IV.....	ad No 115, 2000
Division 1AA	
Division 1AA.....	ad No 51, 2024
s 38.....	ad No 51, 2024
s 38A.....	ad No 51, 2024
Division 1	
s 39.....	am No 26, 1918; No 10, 1957 rs No 115, 2000 am No 51, 2024
Division 2	
s 39A.....	ad No 115, 2000 am No 74, 2006; No 141, 2018; No 51, 2024
s 39B.....	ad No 115, 2000 am No 74, 2006; No 51, 2024
s 39C.....	ad No 115, 2000 am No 55, 2001; No 74, 2006; No 8, 2007; No 127, 2021; No 51, 2024
Division 3	
s 39D.....	ad No 115, 2000 am No 55, 2001; No 42, 2004; No 141, 2018; No 127, 2021; No 51, 2024
s 39DA.....	ad No 42, 2004

Endnote 4—Amendment history

Provision affected	How affected
	am No 51, 2024
s 39E	ad No 115, 2000
	rs No 74, 2006
	am No 51, 2024
s 39F	ad No 115, 2000
	am No 74, 2006; No 51, 2024
Division 3A	
Division 3A.....	ad No 51, 2024
s 39FA.....	ad No 51, 2024
s 39FB.....	ad No 51, 2024
Division 4	
s 39G.....	ad No 115, 2000
	am No 74, 2006; No 141, 2018; No 51, 2024
s 39H.....	ad No 115, 2000
	am No 74, 2006; No 51, 2024
s 39I	ad No 115, 2000
	am No 74, 2006
s 39J	ad No 115, 2000
	am No 51, 2024
s 39K.....	ad No 115, 2000
	am No 74, 2006; No 82, 2018; No 51, 2024
s 39L	ad No 115, 2000
	am No 51, 2024
s 39LA	ad No 51, 2024
Division 5	
s 39M.....	ad No 115, 2000
	am No 82, 2018; No 51, 2024
s 39N.....	ad No 115, 2000
	am No 51, 2024
Division 6	
s 39O.....	ad No 115, 2000

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Endnote 4—Amendment history

Provision affected	How affected
s 39P	ad No 115, 2000 am No 51, 2024
s 39Q.....	ad No 115, 2000
s 39R.....	ad No 115, 2000
s 40.....	rep No 115, 2000 ad No 51, 2024
s 41.....	rs No 26, 1918 am No 10, 1957 rep No 115, 2000
s 42.....	rs No 26, 1918 am No 88, 1947; No 29, 1974; No 39, 1983 rep No 115, 2000
s 43.....	am No 10, 1986; No 85, 1995 rep No 115, 2000
Part IVA	
Part IVA.....	ad No 115, 2000
s 44.....	am No 10, 1986; No 85, 1995 rs No 115, 2000 am No 91, 2004; No 36, 2012; No 51, 2024
s 45.....	am No 93, 1966; No 23, 1972; No 39, 1983; No 40, 1985 rep No 115, 2000
Part V	
s 47.....	am No 93, 1966; No 105, 1968; No 39, 1983; No 40, 1985; No 115, 2000; No 25, 2001 rep No 74, 2006
s 48.....	am No 115, 2000 rep No 74, 2006
s 49.....	am No 93, 1966; No 39, 1983; No 40, 1985; No 115, 2000; No 25, 2001
s 50.....	am No 93, 1966 rs No 105, 1968

Endnote 4—Amendment history

Provision affected	How affected
	am No 39, 1983; No 40, 1985; No 85, 1995; No 115, 2000; No 74, 2006
s 51.....	am No 93, 1966; No 39, 1983; No 40, 1985; No 115, 2000; No 25, 2001; No 146, 2001; No 51, 2024
s 52.....	am No 93, 1966; No 39, 1983; No 40, 1985; No 115, 2000; No 25, 2001; No 51, 2024
s 53.....	am No 105, 1968; No 115, 2000; No 51, 2024
Part VI	
s 54.....	rs No 55, 1952
	am No 113, 1993; No 115, 2000; No 74, 2006; No 141, 2018
s 54A.....	ad No 24, 1989
s 55.....	am No 105, 1968
s 56.....	am No 93, 1966
	rep No 105, 1968
s 57.....	am No 105, 1968
	rep No 74, 2006
s 58.....	am No 26, 1918; No 88, 1947; No 105, 1968; No 149, 1986; No 24, 1989; No 5, 1990; No 111, 1990; No 80, 1991; No 85, 1995; No 85, 2000; No 115, 2000; No 25, 2001; No 74, 2006; No 108, 2008; No 68, 2011
s 58A.....	ad No 11, 1979
	am No 39, 1985; No 40, 1985 (as am by No 34, 1986)
	rep No 111, 1990
s 58B.....	ad No 11, 1979
	am No 40, 1985; No 81, 1982 (as am by No 40, 1985)
	rep No 111, 1990
s 59.....	rs No 55, 1952
	am No 105, 1968; No 29, 1974; No 39, 1983 (as am by No 91, 1983); No 111, 1990
	rs No 34, 1992
	am No 74, 2006; No 141, 2018
s 59A.....	ad No 29, 1974

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Endnote 4—Amendment history

Provision affected	How affected
	am No 39, 1983; No 10, 1986; No 85, 1995; No 115, 2000; No 25, 2001
s 59AA	ad No 74, 2006
	am No 41, 2015
s 59B	ad No 29, 1974
	am No 10, 1986; No 85, 1995; No 115, 2000; No 74, 2006
s 59C	ad No 29, 1974
	am No 10, 1986; No 85, 1995; No 115, 2000
s 59D	ad No 29, 1974
	rep No 61, 1981
s 60	am No 26, 1918
	rs No 55, 1952
	am No 10, 1957; No 105, 1968; No 29, 1974; No 65, 1981; No 39, 1983; No 115, 2000; No 25, 2001; No 91, 2004; No 74, 2006
s 61	am No 93, 1966; No 105, 1968; No 39, 1983; No 40, 1985
	rs No 111, 1990; No 115, 2000; No 25, 2001
s 61AA	ad No 111, 1990
	am No 25, 2001
s 61AB	ad No 111, 1990
	am No 25, 2001
	rep No 91, 2004
s 61A	ad No 105, 1968
	am No 29, 1974; No 39, 1983; No 40, 1985; No 115, 2000; No 25, 2001; No 91, 2004; No 74, 2006; No 36, 2012; No 51, 2024
s 61B	ad No 105, 1968
	am No 29, 1974; No 39, 1983; No 115, 2000; No 25, 2001
s 61C	ad No 105, 1968
	am No 29, 1974; No 39, 1983; No 40, 1985; No 149, 1986; No 111, 1990; No 115, 2000; No 25, 2001; No 36, 2012; No 103, 2013; No 141, 2018; No 92, 2020; No 40, 2023
s 61D	ad No 81, 1982

Endnote 4—Amendment history

Provision affected	How affected
	am No 175, 1985; No 111, 1990; No 85, 1995; No 115, 2000; No 25, 2001; No 146, 2001; No 5, 2015; No 4, 2016
s 61E	ad No 175, 1985
	am No 25, 2001; No 146, 2001; No 33, 2009; No 41, 2015; No 4, 2016
s 62.....	am No 115, 2000
s 64.....	rep No 26, 1918
	ad No 105, 1968
	am No 25, 2001
s 65.....	rep No 26, 1918
	ad No 74, 2006
	am No 68, 2011; No 126, 2015
Part VII	
s 66.....	rep No 26, 1918
	ad No 141, 2018
s 67.....	am No 115, 2000
	rep No 74, 2006
	ad No 141, 2018
s 68.....	am No 115, 2000; No 82, 2018
s 69.....	rep No 74, 2006
s 70.....	rs No 88, 1947
	am No 93, 1966; No 39, 1983; No 40, 1985; No 115, 2000; No 25, 2001; No 146, 2001
	rep No 74, 2006
s 71.....	rep No 88, 1947
s 72.....	rep No 88, 1947
s 73.....	rep No 37, 1962
s 74.....	rep No 37, 1962
s 75.....	rs No 46, 1949
	am No 105, 1968; No 74, 2006
s 76.....	am No 93, 1966; No 39, 1983; No 40, 1985; No 115, 2000; No 25, 2001; No 146, 2001

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 77.....	am No 23, 1972; No 39, 1983
s 77AA.....	ad No 74, 2006
Part VIIA	
Part VIIA heading.....	rs No 107, 2002
Part VIIA	ad No 105, 1968
s 77A.....	ad No 105, 1968
	am No 23, 1972; No 39, 1983; No 24, 1989; No 113, 1993; No 107, 2002; No 74, 2006
s 77B.....	ad No 105, 1968
	am No 23, 1972; No 145, 1973; No 39, 1983
	rs No 24, 1989
	am No 85, 1995; No 25, 2001
	rep No 74, 2006
s 77C.....	ad No 105, 1968
	rs No 23, 1972
	am No 39, 1983; No 40, 1985; No 24, 1989; No 25, 2001
	rep No 74, 2006
s 77D.....	ad No 105, 1968
	am No 24, 1989
s 77E.....	ad No 105, 1968
	am No 39, 1983; No 40, 1985; No 25, 2001
	rs No 51, 2024
s 77F.....	ad No 105, 1968
	am No 29, 1974; No 39, 1983; No 24, 1989; No 115, 2000; No 51, 2024
s 77FA.....	ad No 107, 2002
s 77FB.....	ad No 107, 2002
	rep No 74, 2006
s 77FC.....	ad No 74, 2006
	am No 49, 2019; No 40, 2023

Endnote 4—Amendment history

Provision affected	How affected
Part VIIAA	
Part VIIAA	ad No 74, 2006
s 77FD.....	ad No 74, 2006
s 77FE.....	ad No 74, 2006
s 77FF	ad No 74, 2006
s 77FG.....	ad No 74, 2006
s 77FH.....	ad No 74, 2006
s 77FI.....	ad No 74, 2006
s 77FJ.....	ad No 74, 2006
s 77FK.....	ad No 74, 2006
s 77FL.....	ad No 74, 2006
s 77FM.....	ad No 19, 2010
Part VIIB	
Part VIIB heading.....	rs No 74, 2006
Part VIIB.....	ad No 105, 1968
	rep No 165, 1979
	ad No 113, 1993
s 77G.....	ad No 105, 1968
	rep No 165, 1979
	ad No 113, 1993
	am No 167, 1997; No 105, 2000; No 125, 2000
	rs No 74, 2006
s 77H.....	ad No 105, 1968
	rep No 165, 1979
	ad No 113, 1993
	rs No 74, 2006
	am No 68, 2011; No 58, 2012; No 81, 2015; No 102, 2015
s 77HA.....	ad No 68, 2011
	am No 136, 2011
	rs No 156, 2011; No 81, 2012
s 77HB	ad No 68, 2011

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Endnote 4—Amendment history

Provision affected	How affected
	am No 51, 2024
s 77J.....	ad No 105, 1968
	rep No 165, 1979
	ad No 113, 1993
	rs No 167, 1997; No 74, 2006
s 77K.....	ad No 105, 1968
	rep No 165, 1979
	ad No 113, 1993
	am No 167, 1997; No 74, 2006
s 77L.....	ad No 110, 1978
	am No 50, 1979; No 65, 1981; No 39, 1983
	rep No 101, 1983
	ad No 68, 2011
	am No 136, 2011
s 77M.....	ad No 110, 1978
	am No 50, 1979; No 61, 1981; No 39, 1983
	rep No 101, 1983
	ad No 68, 2011
Part VIIC	
Part VIIC.....	ad No 110, 1978
	rep No 101, 1983
s 77N.....	ad No 110, 1978
	am No 65, 1981
	rep No 101, 1983
s 77P.....	ad No 110, 1978
	rep No 101, 1983
Part VIII	
Part VIII heading.....	rs No 37, 1962
	am No 108, 1982
Part VIII.....	rs No 49, 1958
s 78.....	rep No 26, 1918

Endnote 4—Amendment history

Provision affected	How affected
	ad No 37, 1962
	am No 101, 1983; No 165, 1984; No 113, 1993; No 85, 1995; No 167, 1997; No 74, 2006
s 78AAAA	ad No 113, 1993
	am No 85, 1995; No 167, 1997; No 125, 2000; No 25, 2001
	rep No 74, 2006
s 78A	ad No 108, 1982
	am No 39, 1983; No 101, 1983; No 175, 1985; No 81, 1987; No 99, 1988; No 24, 1989; No 78, 1989; No 5, 1990; No 34, 1992; No 113, 1993; No 85, 1995; No 87, 1995 (as am by No 21, 1996); No 97, 1997; No 87, 1999; No 177, 1999; No 181, 1999; No 91, 2000; No 115, 2000; No 165, 2001; No 46, 2002
	rep No 54, 2003
s 78AA	ad No 81, 1987
	am No 34, 1992
	rs No 97, 1997
	am No 25, 2001
	rep No 54, 2003
s 78AB	ad No 81, 1987
	am No 78, 1989; No 34, 1992
	rs No 97, 1997
	am No 8, 1998
	rep No 54, 2003
s 78AC	ad No 97, 1997
	am No 25, 2001
	rep No 54, 2003
s 78AD	ad No 97, 1997
	am No 25, 2001; No 146, 2001; No 46, 2002
	rep No 54, 2003
s 78AE	ad No 97, 1997
	am No 25, 2001
	rep No 54, 2003

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Endnote 4—Amendment history

Provision affected	How affected
s 78AF.....	ad No 97, 1997 rep No 54, 2003
s 78AG (prev s 80A).....	am No 25, 2001 rep No 54, 2003
s 78B.....	ad No 40, 1985 rep No 175, 1985 ad No 149, 1986 am No 99, 1988 rep No 80, 1991
s 79.....	rs No 49, 1958; No 105, 1968
s 80.....	rep No 26, 1918 ad No 105, 1968 am No 29, 1974; No 65, 1981; No 108, 1982; No 78, 1989; No 85, 1995; No 97, 1997; No 115, 2000; No 54, 2003
s 80A.....	ad No 78, 1989 am No 113, 1993; No 85, 1995; No 97, 1997 reloc and renum No 97, 1997
s 80B.....	ad No 113, 1993 am No 167, 1997; No 125, 2000 rep No 54, 2003
s 81.....	rep No 49, 1958 ad No 40, 1985
Part IX	
Division 1	
Subdivision A	
Subdivision A.....	ad No 85, 1995
s 82.....	rep No 49, 1958 ad No 85, 1995
s 83.....	rep No 49, 1958 ad No 85, 1995 rep No 25, 2001

Endnote 4—Amendment history

Provision affected	How affected
s 84.....	rep No 49, 1958
s 85.....	rep No 49, 1958
Subdivision B	
Subdivision B heading.....	ad No 85, 1995
s 86.....	am No 105, 1968; No 24, 1989; No 115, 2000; No 51, 2024
s 87.....	am No 105, 1968
	rs No 85, 1995
	am No 115, 2000; No 25, 2001
s 87AA.....	ad No 115, 2000
	am No 146, 2001; No 4, 2010; No 82, 2018
s 87A.....	ad No 51, 1982
	am No 104, 1987; No 115, 2000
s 87B.....	ad No 104, 1987
s 88.....	rep No 85, 1995
s 89.....	rep No 85, 1995
s 90.....	am No 93, 1966; No 105, 1968; No 39, 1983; No 40, 1985
	rep No 85, 1995
s 91.....	am No 25, 2001; No 82, 2018
s 92.....	am No 93, 1966; No 39, 1983; No 40, 1985; No 25, 2001
s 93.....	rep No 85, 1995
s 94.....	am No 93, 1966; No 39, 1983; No 40, 1985
	rep No 85, 1995
s 95.....	am No 42, 1980
	rep No 85, 1995
s 96.....	rep No 85, 1995
s 97.....	rep No 85, 1995
s 98.....	am No 39, 1983
	rep No 85, 1995
s 99.....	rep No 85, 1995
Subdivision C heading.....	ad No 85, 1995
	rep No 8, 1998

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Endnote 4—Amendment history

Provision affected	How affected
s 99A.....	ad No 108, 1982 am No 39, 1983; No 5, 1990; No 34, 1992 rep No 97, 1997
Subdivision D	
Subdivision D heading.....	ad No 85, 1995
s 100.....	am No 49, 1958; No 115, 2000; No 25, 2001; No 67, 2016
s 101.....	rep No 49, 1958
s 102.....	am No 115, 2000
s 103.....	am No 115, 2000; No 67, 2016
s 104.....	am No 34, 1986; No 115, 2000; No 25, 2001; No 67, 2016
Subdivision E	
Subdivision E heading.....	ad No 85, 1995
s 105.....	am No 105, 1968; No 115, 2000 rep No 74, 2006
s 106.....	am No 105, 1968; No 25, 2001; No 82, 2018
s 107.....	am No 93, 1966; No 39, 1983; No 40, 1985; No 25, 2001; No 82, 2018
Division 1A	
Division 1A.....	ad No 25, 2001
Subdivision A	
s 107AA.....	ad No 25, 2001 am No 74, 2006; No 26, 2016; No 82, 2018
s 107AAA.....	ad No 82, 2018
s 107AB.....	ad No 25, 2001
Subdivision B	
s 107BA.....	ad No 25, 2001
s 107BB.....	ad No 25, 2001
s 107BC.....	ad No 25, 2001
s 107BD.....	ad No 25, 2001
s 107BE.....	ad No 25, 2001
s 107BF.....	ad No 25, 2001

Endnote 4—Amendment history

Provision affected	How affected
Subdivision C	
s 107CA	ad No 25, 2001
s 107CB	ad No 25, 2001
Subdivision D	
s 107DA	ad No 25, 2001
s 107DB	ad No 25, 2001
s 107DC	ad No 25, 2001
s 107DD	ad No 25, 2001
	am No 41, 2003
s 107DE	ad No 25, 2001
s 107DF	ad No 25, 2001
s 107DG	ad No 25, 2001
s 107DH	ad No 25, 2001
s 107DI	ad No 25, 2001
s 107DJ	ad No 25, 2001
Subdivision E	
s 107EA	ad No 25, 2001
s 107EB	ad No 25, 2001
Subdivision F	
s 107FA	ad No 25, 2001
s 107FB	ad No 25, 2001
s 107FC	ad No 25, 2001
s 107FD	ad No 25, 2001
s 107FE	ad No 25, 2001
s 107FF	ad No 25, 2001
	am No 74, 2006
s 107FG	ad No 25, 2001
s 107FH	ad No 25, 2001
s 107FI	ad No 25, 2001
s 107FJ	ad No 25, 2001
	am No 91, 2004

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Endnote 4—Amendment history

Provision affected	How affected
s 107FK.....	ad No 25, 2001
s 107FL.....	ad No 25, 2001
s 107FM.....	ad No 25, 2001
s 107FN.....	ad No 25, 2001
Subdivision G	
s 107GA.....	ad No 25, 2001
s 107GB.....	ad No 91, 2004
s 107GC.....	ad No 91, 2004
s 107GD.....	ad No 91, 2004
Division 2	
s 109.....	am No 216, 1973; No 19, 1979; No 115, 2000; No 25, 2001
s 110.....	am No 39, 1983; No 115, 2000
s 112.....	am No 115, 2000; No 25, 2001
s 113.....	am No 39, 1983
s 114.....	rs No 49, 1963 am No 29, 1974; No 65, 1981; No 39, 1983
s 115.....	am No 216, 1973; No 19, 1979; No 39, 1983
Part X	
s 116.....	rs No 88, 1947 am No 105, 1968; No 24, 1973; No 216, 1973; No 39, 1983; No 115, 2000; No 25, 2001; No 91, 2004; No 74, 2006; No 21, 2015; No 82, 2018; No 51, 2024
s 117.....	am No 93, 1966; No 105, 1968; No 39, 1983; No 40, 1985 rs No 115, 2000
s 117A.....	ad No 115, 2000
s 117B.....	ad No 115, 2000
s 117BA.....	ad No 68, 2011
s 117C.....	ad No 115, 2000 rep No 82, 2018
s 117D.....	ad No 115, 2000 am No 91, 2004

Endnote 4—Amendment history

Provision affected	How affected
s 117E	ad No 115, 2000 rep No 82, 2018
s 117F	ad No 115, 2000 rep No 82, 2018
s 117G.....	ad No 115, 2000 rep No 82, 2018
s 117H.....	ad No 115, 2000 rep No 82, 2018
s 117I	ad No 115, 2000
s 118.....	am No 39, 1983; No 40, 1985; No 25, 2001; No 146, 2001; No 4, 2016
s 119.....	rs No 88, 1947 am No 93, 1966; No 39, 1983; No 40, 1985 rep No 115, 2000
s 120.....	am No 26, 1918; No 93, 1966; No 105, 1968; No 24, 1973; No 108, 1982; No 39, 1983; No 40, 1985; No 24, 1989; No 97, 1997; No 167, 1997; No 115, 2000; No 125, 2000; No 137, 2000; No 25, 2001; No 146, 2001; No 54, 2003; No 74, 2006; No 4, 2016
s 120A.....	ad No 10, 1957 am No 93, 1966; No 105, 1968; No 39, 1983; No 40, 1985 rep No 115, 2000
s 121.....	am No 39, 1983 rep No 40, 1985
s 122.....	am No 39, 1983 rep No 40, 1985
s 123.....	am No 93, 1966; No 39, 1983; No 115, 2000 rep No 137, 2000
s 124.....	am No 39, 1983; No 40, 1985; No 115, 2000; No 137, 2000 (as am by No 63, 2002); No 25, 2001; No 146, 2001; No 4, 2016
s 125.....	am No 93, 1966; No 39, 1983 rep No 40, 1985
s 126.....	rep No 216, 1973

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 127.....	rep No 216, 1973
s 127A.....	ad No 115, 2000
	am No 68, 2011; No 82, 2018
s 128A.....	ad No 34, 1992
	am No 85, 1995; No 97, 1997
	rep No 54, 2003
s 129.....	am No 39, 1983
	rs No 40, 1985
	rep No 115, 2000
Part XA	
Part XA.....	ad No 115, 2000
s 129A.....	ad No 115, 2000
	am No 82, 2018
s 129B.....	ad No 115, 2000
	am No 82, 2018
s 129C.....	ad No 115, 2000
	am No 69, 2023
s 129D.....	ad No 115, 2000
s 129E.....	ad No 115, 2000
s 129F.....	ad No 115, 2000
s 130.....	rep No 40, 1985
s 131.....	am No 39, 1983
	rep No 40, 1985
s 132.....	rs No 139, 1965
	am No 29, 1974
	rep No 40, 1985
Part XI	
s 133.....	rs No 25, 2001
	am No 54, 2003
s 134.....	am No 26, 1918; No 93, 1966; No 216, 1973; No 19, 1979; No 39, 1983

Endnote 4—Amendment history

Provision affected	How affected
	rs No 40, 1985
	am No 149, 1986; No 24, 1989; No 5, 1990; No 85, 1995; No 115, 2000; No 25, 2001
	ed C57
s 134A.....	ad No 8, 1923
	rep No 40, 1985
	ad No 149, 1986
	rep No 24, 1989
s 135.....	am No 93, 1966; No 216, 1973; No 19, 1979; No 39, 1983
	rep No 40, 1985
s 136.....	am No 216, 1973; No 19, 1979; No 40, 1985
s 137.....	am No 19, 1979
s 138.....	am No 39, 1983
s 139.....	am No 40, 1985
s 140.....	am No 40, 1985
s 142.....	am No 10, 1986; No 85, 1995; No 115, 2000
s 143.....	am No 26, 1918
s 144.....	rs No 26, 1918
	am No 29, 1974; No 146, 2001
	ed C57
s 145.....	am No 85, 1995
	ed C57
s 145A.....	ad No 40, 1985; No 5, 2015
s 147.....	rep No 49, 1958
s 147A.....	ad No 44, 1934
	rep No 49, 1958
s 148.....	am No 115, 2000; No 25, 2001
s 149.....	rep No 49, 1958
s 150.....	am No 25, 2001
s 152.....	rs No 49, 1963
	am No 216, 1973; No 29, 1974

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 153.....	am No 10, 1986; No 85, 1995
Part XII	
s 154.....	am No 139, 1965; No 39, 1983; No 10, 1986; No 85, 1995
s 155.....	am No 26, 1918 rep No 42, 1980 ad No 74, 2010
Part XIII.....	rep No 42, 1980
s 156.....	rep No 42, 1980
s 157.....	am No 29, 1974 rep No 42, 1980
s 158.....	am No 93, 1966 rep No 42, 1980
Part XIV	
s 159.....	rep No 42, 1980 ad No 25, 2001 am No 54, 2003; No 122, 2003; No 42, 2004; No 91, 2004; No 74, 2006 rep No 145, 2010
s 159A.....	ad No 51, 1982
s 160A.....	ad No 10, 1957 rs No 105, 1968 am No 29, 1974; No 39, 1983; No 149, 1986
s 160B.....	ad No 29, 1974 am No 101, 1983; No 10, 1986; No 85, 1995
s 161.....	rep No 25, 2001
s 162A.....	ad No 10, 1957 am No 105, 1968; No 29, 1974; No 42, 1980; No 39, 1983 rep No 115, 2000
s 162B.....	ad No 10, 1957 am No 105, 1968; No 29, 1974; No 36, 1978; No 39, 1983; No 115, 2000; No 88, 2009

Endnote 4—Amendment history

Provision affected	How affected
s 162C.....	ad No 61, 1981 am No 108, 1982; No 81, 1982 (as am by No 39, 1983); No 175, 1985; No 10, 1986; No 81, 1987; No 78, 1989; No 111, 1990; No 85, 1995; No 97, 1997; No 85, 2000; No 115, 2000; No 25, 2001; No 54, 2003; No 74, 2006; No 68, 2011; No 36, 2012; <u>No 38, 2024</u>
s 163.....	am No 26, 1918; No 25, 2001 rep No 74, 2006
Part XV	
Part XV heading	ad No 72, 1984 rs No 25, 2001
s 163A.....	ad No 101, 1983 rs No 72, 1984 am No 40, 1985; No 25, 2001
s 164.....	am No 108, 1982; No 25, 2001
s 164A.....	ad No 108, 2008 rs No 126, 2015 am No 78, 2018
s 165.....	rep No 26, 1918 ad No 72, 1984 am No 39, 1985; No 40, 1985; No 85, 1995; No 167, 1997
s 165A.....	ad No 85, 1995 am No 152, 1997; No 167, 1997; No 25, 2001; No 88, 2009; No 36, 2012; No 62, 2014; <u>No 38, 2024</u>
s 166.....	ad No 72, 1984 am No 39, 1985; No 85, 1995
s 167.....	ad No 72, 1984 am No 39, 1985; No 85, 1995
s 168.....	ad No 72, 1984 am No 58, 2006
s 169.....	ad No 72, 1984 am No 85, 1995 (as am by No 43, 1996)
s 170.....	ad No 72, 1984

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Schedules	
Schedule I	am No 29, 1974; No 25, 2001; No 5, 2015
Schedule II	am No 15, 1968; No 29, 1974; No 85, 1995 rep No 115, 2000
Schedule III.....	am No 15, 1968; No 29, 1974; No 85, 1995 rep No 115, 2000
Schedule IV	am No 29, 1974 rep No 115, 2000
Schedule V.....	am No 15, 1968; No 29, 1974; No 85, 1995 rep No 115, 2000
Schedule VI	rs No 26, 1918 rep No 115, 2000
Schedule VII.....	am No 88, 1947; No 15, 1968; No 29, 1974; No 85, 1995 rep No 115, 2000
Schedule VIII.....	rs No 26, 1918 rep No 10, 1957
Schedule IX	rs No 26, 1918 rep No 10, 1957
Schedule X.....	rep No 26, 1918
