

EXCISE ACT 1974

No. 29 of 1974

An Act to amend the *Excise Act* 1901-1973.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

1. (1) This Act may be cited as the *Excise Act* 1974.¹

Short title
and citation.

(2) The *Excise Act* 1901-1973² is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Excise Act* 1901-1974.

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹

Commence-
ment.

3. Section 59 of the Principal Act is amended by omitting the words “The Excise duty” and substituting the words “Subject to section 59A, the Excise duty”.

Payment of
duty.

4. After section 59 of the Principal Act the following sections are inserted:—

“59A. (1) If at any time the Minister 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 Minister 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.

Declared
period
quotas—
effect on
rates of
Excise duty.

“(2) The Minister shall, in a notice under sub-section (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 Minister makes a declaration under sub-section (1) specifying a declared period in respect of goods of any kind, he 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 relates is such quantity as is

specified in the order or is nil, and, subject to sub-section (4) of this section and sub-section (6) of section 61C, 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 Minister may, before the entry is passed and whether or not the declared period has expired, make, under sub-section (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 sub-section (6) of section 61C 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 sub-section (3), or revoking or varying a quota order under section 59B, with respect to a person, the Minister 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 Minister considers relevant, the person has entered for home consumption, and to such other matters as the Minister 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 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 Customs 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 sub-section (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.

“(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 the ‘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 sub-section (2) of section 61C, deemed to have entered the goods for home consumption at that time.

“59B. (1) The Minister may, by writing under his 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, under regulations made by virtue of section 59D, application may be made for the review of the quota order,

whichever last occurs.

“(2) Where a quota order is revoked by the Minister under this section, the revocation shall be deemed to have taken effect on the day on which the order came into force.

“(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

Revocation
and
variation of
quota orders.

quota order relates is the same as the kind of goods to which the revoked quota order related.

“(4) Subject to sub-section (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 Minister 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.

Service of
quota orders,
&c.

“59C. The Minister shall, as soon as practicable after he 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.

Review of
quota orders.

“59D. The regulations may make provision for and in relation to the review of quota orders and variations of quota orders, by a review tribunal, specified in, or constituted by or under, the regulations.”.

Permission
to deliver
goods of
approved
kind for
home
consumption
without
entry.

5. Section 61C of the Principal Act is amended by adding at the end thereof the following sub-sections:—

“(5) Subject to sub-section (6), a permission under sub-section (1) does not authorize the delivery of goods in respect of which a quota order under sub-section (3) of section 59A is in force at any time if the Customs would have the right under sub-section (8) of that section, 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 sub-section (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.”.

Time for
commencing
action.

6. Section 114 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(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 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 6 months after the Excise Tariff or Excise Tariff alteration is so proposed, whichever first happens.”.

7. After section 160A of the Principal Act the following section is inserted:—

“160B. (1) The Minister 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 it is intended, within 7 sitting days of the House of Representatives after the date of the 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 after the publication of the notice as is specified in the notice.

Notification of proposals when House of Representatives not sitting.

“(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.”.

8. The Principal Act is amended as set out in the Schedule.

Formal amendments.

SCHEDULE

Section 8

FORMAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting any number expressed in words that is used, whether with or without the addition of a letter or letters, to identify a section of that Act or of another Act, and substituting that number expressed in figures:—

Sections 4 (1) (definition of “Approved place”), 12A, 59, 60 (1A) and (1B), 61A (4), 61B (1), 61C (4), 132, 152, 160A (2) and (3), 162A (1) and 162B (1) and (5).

2. The following provisions of the Principal Act are amended by omitting the words “of this Act”, “to this Act” and “of this section”, (wherever occurring):—

Sections 4 (1) (definition of “Approved place”), 28, 37 (2), 59, 60 (1A) and (1B), 61A (3) and (4), 61B (1), 61C (3) and (4), 77F (3), 144 (4), 157, 162A (1) and 162B (1) and (5).

SCHEDULE—continued

3. The Principal Act is further amended as set out in the following table:—

Provision	Amendment
Section 42 (1)	Omit “the thirty-first day of December”, substitute “31 December”.
Section 60	Omit “the Commonwealth” (wherever occurring), substitute “Australia”.
Section 80	Omit “the Commonwealth” (wherever occurring), substitute “Australia”.
Section 152	Omit “of this Act”.
Schedule I	Omit from the heading of the form “COMMONWEALTH OF”.
Schedule II	Omit from the heading of the form “COMMONWEALTH OF”.
Schedule III	Omit from the heading of the form “COMMONWEALTH OF”.
Schedule IV	Omit from the heading of the form “COMMONWEALTH OF”.
Schedule V	Omit from the heading of the form “COMMONWEALTH OF”.
Schedule VII	Omit from the heading of the form “COMMONWEALTH OF”.

NOTES

1. Act No. 29, 1974; assented to 1 August 1974.
2. Act No. 9, 1901, as amended by No. 26, 1918; No. 8, 1923; No. 44, 1934; No. 16, 1942; No. 88, 1947; No. 46, 1949; No. 55, 1952; No. 10, 1957; No. 49, 1958; No. 37, 1962; No. 49, 1963; No. 139, 1965; No. 93, 1966; Nos. 15 and 105, 1968; No. 23, 1972; Nos. 24 and 145, 1973; and No. 216, 1973 (as amended by No. 20, 1974).