



Tradex Scheme Act 1999

No. 185, 1999



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An Act to establish a scheme, to be known as the Tradex Scheme, for the importation, without payment of duties of customs or other taxes, of goods that are to be subsequently exported, and for related purposes

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[Assented to 23 December 1999]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Tradex Scheme Act 1999*.

Section 2

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within 6 months after the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

3 Object of Act

The object of this Act is to establish a statutory scheme, to be known as the Tradex Scheme, under which goods may be imported without payment of duties of customs or other taxes provided that the goods are subsequently exported or incorporated in other goods that are exported.

4 Definitions

In this Act, unless the contrary intention appears:

approved form means a form approved under section 44.

authorised officer means an individual holding an appointment as an authorised officer under section 45.

container includes every means by which goods may be covered, enclosed, packed or contained.

core criteria:

- (a) for the making of an application for, or an application for the variation of, a tradex order—has the meaning given by subsection 5(1); or
- (b) for the holding of a tradex order—has the meaning given by subsection 5(2).

disqualifying circumstances has the meaning given by section 6.

document includes a book and any record.

Drawback Regulations means regulations in force under section 168 of the *Customs Act 1901*.

eligible goods means goods other than:

- (a) goods intended for sale in an establishment that offers goods for sale free of duties of customs and other taxes; and
- (b) goods which, if they were produced in Australia, would be subject to duties of excise or to another tax that is declared by the regulations to be a tax to which this paragraph applies.

enter for home consumption means enter for home consumption under section 68 of the *Customs Act 1901*.

exempt class of goods means a class of goods declared by the regulations to be goods in respect of which some or all of the requirements of the Drawback Regulations may not be able to be complied with.

exportation, in relation to goods, includes the exportation of other goods in which the first-mentioned goods are incorporated.

externally-administered body corporate means a body corporate:

- (a) that is being wound up under the Corporations Law; or
- (b) in respect of whose property a receiver, or a receiver and manager, appointed (whether by a court or otherwise) under the Corporations Law is acting; or
- (c) that is under administration within the meaning of the Corporations Law; or
- (d) that has executed a deed of company arrangement within the meaning of the Corporations Law that has not yet terminated; or
- (e) that has entered into with another person a compromise or arrangement within the meaning of the Corporations Law the administration of which has not been concluded;

and includes a body corporate that has, under the law of a State or internal Territory (other than the Corporations Law) or a law of an external Territory or of a foreign country, a similar status to a body corporate to which paragraph (a), (b), (c), (d) or (e) applies.

holder of a tradex order means the person on whose application the order was made.

identity card means an identity card issued under subsection 45(2).

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ineligible: a person is ineligible to apply for, or to hold, a tradex order if the person is an insolvent under administration or an externally-administered body corporate.

infringement notice means a notice served under section 33.

insolvent under administration means a person who:

- (a) under the *Bankruptcy Act 1966*, or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or
- (b) under the law of a foreign country, or the law of an external Territory, has the status of an undischarged bankrupt;

and includes:

- (c) a person who has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966*, or the corresponding provisions of the law of an external territory or of a law of a foreign country, where the terms of the deed have not been fully complied with; and
- (d) a person whose creditors have accepted a composition under Part X of the *Bankruptcy Act 1966*, or the corresponding provisions of the law of an external territory or of a law of a foreign country, where a final payment has not been made under the composition.

kind or description of goods includes a kind or description expressed by reference to the tariff classification in the *Customs Tariff Act 1995* by which goods of that kind or description are classified.

magistrate means any magistrate, whether remunerated by salary or not.

nominated goods means:

- (a) in relation to goods of a kind or description in respect of which an application has been made for a tradex order—eligible goods of the kind or description specified in the application that are intended to be imported by the applicant; or
- (b) in relation to goods of a kind or description in respect of which a tradex order is in force—eligible goods of the kind

Section 4

or description specified in the order that are intended to be imported, or are imported, by the holder of the order.

occupier of premises means the person in charge, or apparently in charge, of the premises.

offence against this Act includes an offence against section 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914* in relation to an offence against this Act.

premises includes any place (whether enclosed or built on, or not) and, in particular, includes:

- (a) a building, wharf or other structure; and
- (b) a vessel; and
- (c) an aircraft; and
- (d) a vehicle; and
- (e) a part of premises (including a part of any of the above).

Register means the Register of Tradex Orders kept under section 9.

required records has the meaning given by subsection 22(2).

requirements of the Drawback Regulations, in relation to goods, means requirements of the Drawback Regulations that would have applied in respect of the goods upon their exportation if duties of customs has been paid in respect of them on their entry for home consumption.

Secretary means Secretary of the Department.

Texco Scheme means the administrative scheme of that name that was in force immediately before the commencement of this Act under Customs By-law 9640056 for the purposes of item 21 of Schedule 4 to the *Customs Tariff Act 1995*.

tradex duty means the tax known as tradex duty that is payable under section 21, as imposed by the *Tradex Duty Imposition (Excise) Act 1999*, the *Tradex Duty Imposition (Customs) Act 1999* or the *Tradex Duty Imposition (General) Act 1999*.

tradex number has the meaning given by paragraph 11(7)(a).

Section 5

tradex order means an order made under section 11 that is in force.

Tradex Scheme means the scheme for the making of tradex orders that is established by this Act.

5 Core criteria for applying for or holding a tradex order

- (1) The **core criteria** for the making by a person of an application for, or an application for a variation of, a tradex order are:
 - (a) that the person intends to import nominated goods that are to be subsequently exported; and
 - (b) that, in relation to nominated goods, either:
 - (i) the requirements of the Drawback Regulations will be complied with; or
 - (ii) the goods are included in an exempt class of goods; and
 - (c) that the nominated goods will be exported within one year after their entry for home consumption; and
 - (d) that adequate record-keeping and accounting systems are in place in respect of nominated goods until they are exported.
- (2) The **core criteria** for the holding by a person of a tradex order are:
 - (a) that the holder:
 - (i) intends to import nominated goods that are to be subsequently exported; or
 - (ii) has imported, and intends to continue to import, nominated goods that have been, or are to be, subsequently exported; and
 - (b) that the requirements of the Drawback Regulations have been complied with in respect of such of the nominated goods as have been exported and were not included in an exempt class of goods; and
 - (c) that every exportation of nominated goods occurred within one year after their entry for home consumption; and
 - (d) that adequate record-keeping and accounting systems are in place in respect of nominated goods until they are exported.

Note: The Secretary has power to extend periods referred to in paragraphs (1)(c) and (2)(c) (see section 43).

6 Disqualifying circumstances

Disqualifying circumstances exist in relation to a person who is the holder of a tradex order if:

- (a) any of the core criteria for the holding of the order have not been complied with, except where the only effect of the non-compliance was to render the person liable to pay tradex duty and the person has paid the duty in accordance with section 21; or
- (b) the person gave information, or a document, to the Secretary or to an authorised officer in connection with an application for, or for a variation of, the order or an application for, or for a variation of, another tradex order, being information or a document that the person knew, or ought to have known, to be false or misleading in a material particular; or
- (c) the person was ineligible to apply for the order; or
- (d) the person is ineligible to hold the order; or
- (e) the person has failed to pay tradex duty in accordance with section 21 in respect of:
 - (i) nominated goods; or
 - (ii) nominated goods in relation to another tradex order that is or has been held by the person.

7 Act not to extend to external Territories

This Act does not extend to the external Territories.

8 Act not to bind Crown

This Act does not bind the Crown in any of its capacities.

Part 2—Register of Tradex Orders

9 Secretary to ensure that Register is kept

- (1) The Secretary must cause a Register of Tradex Orders to be kept for the purposes of this Act.
- (2) The Register is to contain such particulars, and to be kept in such form, as the Secretary considers appropriate.
- (3) The Register may be kept in an electronic form.
- (4) If the Secretary finds out that any particulars entered in the Register are incorrect, whether because a change has occurred in the matter to which the particulars relate or for any other reason, the Secretary must, as soon as practicable, cause the correct particulars to be entered in the Register.
- (5) The Secretary must cause the holder of a tradex order to be notified in writing of the particulars entered in the Register in respect of the order.
- (6) If a change occurs in any of the particulars that:
 - (a) are entered in the Register in respect of a tradex order; and
 - (b) have been notified to the holder of the order under subsection (5);the holder must, within 14 days after the change occurs, notify the Secretary in writing of the details of the change.

Note: The Secretary has power to extend a period referred to in subsection (6) (see section 43).

Part 3—Making of tradex orders

10 Application for tradex order

- (1) A person who proposes to import eligible goods of a particular kind or description may apply for a tradex order in relation to goods of that kind or description.
- (2) The application must:
 - (a) be in writing; and
 - (b) be in accordance with the approved form; and
 - (c) specify the kind or description of goods to which the application relates; and
 - (d) contain such other information as the form requires; and
 - (e) be signed in the manner indicated in the form; and
 - (f) be lodged with the Secretary.
- (3) The Secretary may at any time, by written notice given to the applicant, require the applicant to give to the Secretary in writing, within a period (being a reasonable period) stated in the notice, any of the following:
 - (a) particulars of proposed export activities that would, if the order were not made, make the nominated goods eligible for drawback when they are exported;
 - (b) particulars of the measures proposed to be taken to ensure that the requirements of the Drawback Regulations will be complied with in respect of such of the goods as not included in an exempt class of goods;
 - (c) particulars of the record-keeping or accounting systems that are in place in respect of the nominated goods until they are exported;
 - (d) any other information relevant to the Secretary's consideration of the application.

Note: The Secretary has power to extend a period referred to in subsection (3) (see section 43).

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11 Making of tradex order

- (1) Subject to subsection (2), if the Secretary is satisfied that:
- (a) the core criteria for the making of the application are complied with in respect of some or all of the nominated goods; and
 - (b) the applicant is not ineligible to apply for the tradex order; and
 - (c) the applicant has not given to the Secretary or to an authorised officer for the purposes of this Act any information or document that the applicant knew, or ought to have known, to be false or misleading in a material particular; and
 - (d) the applicant has not failed to pay tradex duty in accordance with section 21 in respect of nominated goods in relation to another tradex order that is or has been held by the applicant;
- the Secretary must make an order stating that the nominated goods in respect of which the Secretary is satisfied as mentioned in paragraph (a) are eligible to be entered under item 21A of Schedule 4 to the *Customs Tariff Act 1995*.
- (2) The Secretary may refuse the application, wholly or partly, except in so far as he or she is required to make a tradex order in respect of the application under subsection (1).
- (3) The Secretary must cause a written notice of his or her decision on the application to be given to the applicant.
- (4) If a notice under subsection (3) has not been received by the applicant within 40 days after the day on which the application was lodged, the Secretary is taken to have refused the application.
- Note: For the right to have a decision refusing the application reconsidered, see section 39.
- (5) If the decision is to refuse the application wholly or partly, the notice of the decision given under subsection (3) must:
- (a) set out the Secretary's findings on material questions of fact; and
 - (b) refer to the evidence or other material on which those findings were based; and

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- (c) give the reasons for the decision.
- (6) A tradex order must be in writing signed by the Secretary and comes into force on a date stated in the order.
- (7) When the Secretary makes a tradex order, the Secretary must:
 - (a) cause a distinguishing number (the **tradex number**) to be allocated to the order; and
 - (b) cause particulars of the order and the tradex number to be entered in the Register; and
 - (c) include in the notice of the decision given under subsection (3) (in addition to any other matters that may be required under subsection (5) to be included in the notice) particulars of:
 - (i) the tradex number allocated to the order; and
 - (ii) the date on which the order comes into force; and
 - (iii) the nominated goods to which the order applies.
- (8) A tradex order is not a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*.

Part 4—Variation of tradex orders

12 Application for variation of tradex order

- (1) The holder of a tradex order may apply for a variation of the order in relation to goods of a particular kind or description.
- (2) The variation applied for must be a variation by way of either or both of the following:
 - (a) the exclusion from the order of goods of a kind or description specified in the order;
 - (b) the inclusion in the order of eligible goods of a kind or description not already specified in the order.
- (3) The application must:
 - (a) be in writing; and
 - (b) be in accordance with the approved form; and
 - (c) state the tradex number allocated to the order; and
 - (d) set out particulars of the kind or description of goods that are to be excluded from, or included in, the order by the proposed variation; and
 - (e) contain such other information as the form requires; and
 - (f) be signed in the manner indicated in the form; and
 - (g) be lodged with the Secretary.
- (4) The Secretary may at any time, by written notice given to the applicant, require the applicant to give to the Secretary in writing, within a period (being a reasonable period) stated in the notice, any information relevant to the Secretary's consideration of the application.

Note: The Secretary has power to extend a period referred to in subsection (4) (see section 43).

13 Grant or refusal of application for variation

- (1) If:
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- (a) the application is or includes an application for the exclusion from the tradex order of goods of a particular kind or description; and
 - (b) the Secretary is satisfied that, if goods of that kind or description are excluded from the order, no disqualifying circumstances will exist in relation to the applicant;the Secretary must grant the application in so far as it is an application for the exclusion of goods of that kind or description.
 - (2) If:
 - (a) the application is or includes an application for the inclusion in the tradex order of goods of a particular kind or description; and
 - (b) the Secretary is satisfied that the core criteria for the making of the application are complied with in respect of some or all of those goods; and
 - (c) the Secretary is satisfied that no disqualifying circumstances exist in relation to the applicant;the Secretary must grant the application in so far as it is an application for the inclusion of goods in respect of which the Secretary is satisfied as mentioned in paragraph (b).
 - (3) The Secretary may refuse the application wholly or partly, except in so far as he or she is required to grant the application under subsection (1) or (2).
 - (4) The Secretary must cause a written notice of his or her decision on the application to be given to the applicant.
 - (5) If a notice under subsection (4) has not been received by the applicant within 40 days after the day on which the application was lodged, the Secretary is taken to have refused the application.

Note: For the right to have a decision refusing the application reconsidered, see section 39.
 - (6) If the decision is to refuse the application wholly or partly, the notice of the decision given under subsection (4) must:
 - (a) set out the Secretary's findings on material questions of fact; and
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Section 13

- (b) refer to the evidence or other material on which those findings were based; and
 - (c) give the reasons for the decision.
- (7) If the Secretary decides to grant the application wholly or partly, the Secretary must vary the tradex order so as to give effect to the decision.
- (8) A variation of a tradex order must be in writing signed by the Secretary and comes into force on a date stated in the instrument of variation.
- (9) If the Secretary varies the tradex order, the Secretary:
 - (a) must cause particulars of the variation to be entered in the Register; and
 - (b) include in the notice given under subsection (4) (in addition to any other matters that may be required under subsection (6) to be included in the notice) particulars of:
 - (i) the kind or description of goods that have been excluded from, or included in, the order; and
 - (ii) the date on which the variation comes into force.

Part 5—Revocation, suspension and cessation of tradex orders

14 Request by holder for revocation of tradex order

- (1) The holder of a tradex order may request the Secretary to revoke the order.
- (2) The request must:
 - (a) be in writing; and
 - (b) be in accordance with the approved form; and
 - (c) state the tradex number allocated to the tradex order; and
 - (d) contain such information as the form requires; and
 - (e) be signed in the manner indicated in the form; and
 - (f) be lodged with the Secretary.

15 Holder to notify ineligibility

- (1) If the holder of a tradex order:
 - (a) becomes aware that the holder was ineligible to apply for the order; or
 - (b) becomes ineligible to hold the order;the holder must, within 7 days after becoming aware as mentioned in paragraph (a) or becoming ineligible as mentioned in paragraph (b), give notice to the Secretary in accordance with subsection (2).

Note: The Secretary has power to extend the period referred to in subsection (1) (see section 43).

- (2) The notice must:
 - (a) be in writing; and
 - (b) be in accordance with the approved form; and
 - (c) state the tradex number allocated to the order; and
 - (d) state that the holder was ineligible to apply for the order, or has become ineligible to hold the order, as the case may be; and

Section 16

- (e) set out particulars of the circumstances that gave rise to the ineligibility; and
- (f) contain such other information as the form requires; and
- (g) be signed in the manner indicated in the form; and
- (h) be lodged with the Secretary.

16 Notice to show cause why tradex order should not be revoked

If it appears to the Secretary that any circumstances (other than circumstances specified in a notice given to the Secretary under section 15) that may be disqualifying circumstances exist in relation to the holder of a tradex order, the Secretary must cause to be given to the holder a written notice:

- (a) setting out particulars of the circumstances; and
- (b) inviting the holder to give to the Secretary, within 28 days after the day on which the notice is received by the holder, written evidence:
 - (i) that the circumstances do not exist; or
 - (ii) if the circumstances exist—that they are not disqualifying circumstances.

Note: The Secretary has power to extend the period referred to in paragraph 16(b) (see section 43).

17 Suspension of tradex order

- (1) If the Secretary:
 - (a) decides to give a notice under section 16 to the holder of a tradex order; and
 - (b) believes on reasonable grounds that any disqualifying circumstances exist in relation to the holder; and
 - (c) considers that it is appropriate to take action under this section;

the Secretary may suspend the order.

Note: For the right to have a decision suspending a tradex order reconsidered, see section 39.

- (2) The Secretary must cause a written notice of:

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- (a) his or her decision to suspend the tradex order, and the reasons for the decision; and
 - (b) the date on which the suspension comes into force;

to be given to the holder of the order. The notice may be included in the notice given under section 16.
- (3) A tradex order that has been suspended is taken not to be in force during the period of the suspension.
- (4) If the Secretary believes that it is appropriate to do so, the Secretary may remove the suspension of a tradex order.
- (5) The Secretary must cause a written notice of:
 - (a) his or her decision to remove the suspension of a tradex order; and
 - (b) the date on which the removal of the suspension comes into force;

to be given to the holder of the order.
- (6) The suspension, or the removal of the suspension, of a tradex order must be in writing signed by the Secretary and comes into force on a date stated in the instrument of suspension or removal.
- (7) The Secretary must cause particulars of the suspension, or of the removal of the suspension, and the date on which the suspension or removal comes into force, to be entered in the Register.
- (8) The suspension of a tradex order, if not sooner removed, ceases to be in force if the order is revoked.

18 Revocation of tradex order following request under section 14

- (1) As soon as practicable after a request for the revocation of a tradex order is lodged by the holder of the order under section 14, the Secretary must:
 - (a) revoke the order; and
 - (b) cause written notice of the revocation, and the date on which the revocation comes into force, to be given to the person who made the request; and

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- (c) cause to be entered in the Register a statement that the order has been revoked and the date on which the revocation comes into force.
- (2) The revocation of a tradex order under this section must be in writing signed by the Secretary and comes into force on a date stated in the instrument of revocation.

19 Revocation of tradex order following notice given to Secretary under section 15 or given by Secretary under section 16

- (1) If:
 - (a) the holder of a tradex order has given a notice to the Secretary under section 15; or
 - (b) a notice is given to the holder of a tradex order under section 16 and the holder does not satisfy the Secretary, within the period stated in the notice, that the circumstances specified in the notice:
 - (i) do not exist; or
 - (ii) if they exist—are not disqualifying circumstances;the Secretary must revoke the order.

Note: For the right to have a decision revoking a tradex order under this section reconsidered, see section 39.

- (2) The revocation of a tradex order under this section must be in writing signed by the Secretary and comes into force on a date stated in the instrument of revocation.
- (3) The Secretary must cause a written notice of his or her decision to revoke the order to be given to the holder of the order.
- (4) The notice of the decision must:
 - (a) state the day on which the revocation comes into force; and
 - (b) set out the Secretary's findings on material questions of fact; and
 - (c) refer to the evidence or other material on which those findings were based; and
 - (d) give the reasons for the decision.

- (5) If a tradex order is revoked under this section, the Secretary must cause to be entered in the Register a statement that the order has been revoked and the date on which the revocation comes into force.

20 Where individual holder dies or incorporated holder ceases to exist

If the Secretary becomes aware that the Register contains particulars of a tradex order that was held by an individual who has died or by a body corporate that has ceased to exist, the Secretary must cause to be entered in the Register a statement that the individual has died or the body corporate has ceased to exist and the date on which the individual died or the body corporate ceased to exist.

Section 21

Part 6—Liability to pay tradex duty in respect of nominated goods in certain circumstances

21 Liability of holder to pay tradex duty

- (1) If any of the following circumstances occur in respect of any of the nominated goods in relation to a tradex order:
- (a) the goods are consumed or used by the holder in Australia;
 - (b) the goods are disposed of or otherwise dealt with in any way by the holder for the purpose of being consumed or used by another person in Australia;
 - (c) except in the case of goods included in an exempt class of goods, any of the requirements of the Drawback Regulations are not complied with in respect of the goods;
 - (d) the goods are not exported within the period applicable under paragraph 5(2)(c);
- the following provisions of this section have effect.
- (2) The holder of the order is liable to pay to the Commonwealth, in accordance with the regulations, tradex duty in respect of the goods.
- (3) The tradex duty is payable within 28 days after the earliest of whichever of the following days is applicable:
- (a) the day on which the goods are consumed or used as mentioned in paragraph (1)(a);
 - (b) the day on which the goods are disposed of or otherwise dealt with as mentioned in paragraph (1)(b);
 - (c) a day on which a requirement of the Drawback Regulations is not complied with in respect of the goods;
 - (d) the last day of the period referred to in paragraph (1)(d).

Note: The Secretary has power to extend the period referred to in subsection (3) (see section 43).

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- (4) An amount of tradex duty that is not paid within the period referred to in subsection (3) is a debt due to the Commonwealth and is recoverable by action in any court of competent jurisdiction.
- (5) A person who fails to pay an amount of tradex duty in accordance with subsection (3) continues to be liable to pay the duty even if a person is convicted of an offence, or pays a penalty under Part 10, in respect of the failure to pay the amount.
- (6) In this section:

consumed or used means consumed or used otherwise than as permitted by regulations made for the purposes of this section.

Part 7—Keeping of records

22 Holder of tradex order to keep records in relation to nominated goods

- (1) If any nominated goods in relation to a tradex order are entered for home consumption, the holder of the order must keep, or ensure that another person keeps on behalf of the holder, the required records in relation to the goods in accordance with section 23.
- (2) The **required records** are records containing full particulars of the entry of the goods for home consumption and all subsequent dealings with, and things done in respect of, the goods by the holder, including particulars of:
 - (a) any incorporation of the goods in other goods;
 - (b) the storage of the goods, or of any goods in which they are incorporated, while they are in the possession, custody or ownership of the holder;
 - (c) if the goods, or any goods in which they are incorporated, are consumed or used in Australia by the holder—the consumption or use;
 - (d) if the goods, or any goods in which they are incorporated, are disposed of, or otherwise dealt with, by the holder for the purpose of being consumed or used by any other person in Australia—the disposal or other dealing;
 - (e) the exportation of the goods or of any goods in which they are incorporated;
 - (f) any payment of tradex duty in respect of the goods;
 - (g) any other matters specified in the regulations.

23 Provisions relating to keeping of required records

- (1) The required records in relation to goods are to be kept at a place in Australia.
- (2) The required records in relation to goods are to be kept:
 - (a) in writing in the English language; or

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- (b) in another form (including an electronic form) that enables them to be readily converted into writing in the English language.
- (3) The required records in relation to goods are to be kept for 5 years after the last occasion on which any act was done in relation to the goods by, or at the request or direction of, the holder of the order.

Part 8—Audit

24 Audit powers

- (1) An authorised officer has the powers conferred by this section but may not exercise the power to enter premises:
 - (a) except with the consent of the occupier of the premises or under the authority of a monitoring warrant issued under section 25; and
 - (b) if the occupier of the premises requires the officer to produce his or her identity card for inspection by the occupier—unless the officer complies with the requirement.
- (2) An authorised officer has power to do all or any of the following in respect of the holder of a tradex order:
 - (a) to require the holder, within a period specified by the officer, to make available for examination by the officer in accordance with subsection (3) specified documents:
 - (i) which are in the holder's possession, or to which the holder has access; and
 - (ii) which are relevant to whether any disqualifying circumstances exist in relation to the holder;
 - (b) to require the holder to demonstrate to the officer the operation of any record-keeping or accounting system used in respect of the nominated goods;
 - (c) to conduct testing of any such record-keeping or accounting system in order to determine its accuracy in respect of the nominated goods;
 - (d) if the holder has indicated, or documents made available by the holder indicate, that nominated goods have been, are, or may be, on particular premises—subject to subsection (1), to enter the premises;
 - (e) to search, with such assistance as is necessary, for any nominated goods on premises so entered and:
 - (i) to examine any such goods that are on the premises and, for that purpose, to open (including to break open) any

container in which any such goods are, or may be, stored; and

- (ii) to take and retain samples of any such goods;
- (f) to examine, and to make and retain copies of, or take and retain extracts from, any documents made available in accordance with a requirement under paragraph (a) or found on premises entered under paragraph (d);
- (g) to require the holder, an agent of the holder, or an employee of the holder or of such an agent, to answer any questions about:
 - (i) any documents referred to in paragraph (f); or
 - (ii) any record-keeping or accounting system referred to in paragraph (b); or
 - (iii) the nominated goods.

Note: The Secretary has power to extend the period specified in a requirement made under paragraph (2)(a) (see section 43).

- (3) A requirement under paragraph (2)(a) to make documents available for examination by an authorised officer must be complied with either:
 - (a) by sending or giving the documents (or copies of the documents that are certified, in a manner acceptable to the officer, to be true copies) to the officer for examination; or
 - (b) by notifying the officer that the documents may be examined, at any reasonable time, by the officer at the premises where they are kept and allowing the officer so to examine them.
- (4) The occupier of premises entered by an authorised officer under paragraph (2)(d) must provide the officer with all reasonable facilities for the effective exercise of the officer's powers.

25 Monitoring warrants

- (1) An authorised officer may apply to a magistrate for a monitoring warrant under this section in relation to particular premises.
- (2) Subject to subsection (3), the magistrate is to issue a monitoring warrant if the magistrate is satisfied, by information on oath or affirmation, that:

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- (a) the occupier of the premises has not consented to the officer entering the premises; and
 - (b) it is reasonably necessary that the officer should have access to the premises for the purpose of finding out whether any nominated goods, or documents relating to any nominated goods, are on the premises.
- (3) The magistrate must not issue a monitoring warrant unless the officer or another person has given the magistrate, either orally (on oath or affirmation) or by affidavit, such further information as the magistrate requires about the grounds on which the issue of the warrant is being sought.
- (4) The monitoring warrant must:
 - (a) authorise an authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable, from time to time, while the warrant remains in force:
 - (i) to enter the premises; and
 - (ii) to exercise powers of the kind set out in paragraphs 24(2)(b), (c), (e), (f) and (g) in relation to the premises; and
 - (b) state whether an entry under the warrant is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than 7 days after the day on which the warrant is issued) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.

Part 9—Offences

26 Failure to notify details of change in registered particulars

A person is guilty of an offence if:

- (a) the person is the holder of a tradex order; and
- (b) the person is required by subsection 9(6) to notify the Secretary of the details of a change in any of the particulars entered in the Register in respect of the order; and
- (c) the person fails to comply with the requirement.

Maximum penalty: 30 penalty units.

27 Failure to notify ineligibility

A person is guilty of an offence if:

- (a) the person is the holder of a tradex order; and
- (b) the person is required by section 15 to give a notice to the Secretary; and
- (c) the person fails to comply with the requirement.

Maximum penalty: 30 penalty units.

28 Failure to pay tradex duty

(1) A person is guilty of an offence if:

- (a) the person is liable under subsection 21(2) to pay to the Commonwealth tradex duty in respect of goods; and
- (b) the person fails to pay the duty within the period applicable under subsection 21(3).

Maximum penalty: An amount equal to the amount of tradex duty that was not paid by the person within the period applicable under subsection 21(3).

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

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

29 Failure to keep records

A person is guilty of an offence if:

- (a) the person is required by section 22 to keep records in respect of any goods; and
- (b) the person fails to comply with the requirement.

Maximum penalty: 30 penalty units.

30 Failure to comply with requirement made by authorised officer

(1) A person is guilty of an offence if:

- (a) a requirement is made of the person by an authorised officer under paragraph 24(2)(a), (b) or (g); and
- (b) the person refuses or fails to comply with the requirement.

Maximum penalty: 60 penalty units.

(2) A person is not entitled:

- (a) to refuse to answer a question that he or she is required by an authorised officer to answer under paragraph 24(2)(g); or
- (b) to refuse to make available for examination documents that he or she is required to make available by an authorised officer under paragraph 24(2)(a);

on the ground that the answer to the question or the making available of the documents, as the case may be, might tend to incriminate him or her.

(3) However, any answer so given, or the making available of any such documents, and any information or thing (including any document) obtained as a direct or indirect result of the giving of the answer or the making available of the documents, is not admissible in evidence against the person in:

- (a) any criminal proceedings other than proceedings for an offence against section 32; or
- (b) any civil proceedings.

31 Failure by occupier of premises to provide facilities or assistance for authorised officer

The occupier of premises entered by an authorised officer under paragraph 24(2)(d) is guilty of an offence if the occupier fails to provide the officer with all reasonable facilities and assistance for the effective exercise of the officer's powers.

Maximum penalty: 10 penalty units.

32 False or misleading statements

A person is guilty of an offence if:

- (a) the person answers a question asked by an authorised officer or gives a document to, or makes a document available for examination by, the Secretary or an authorised officer; and
- (b) the answer or the document is false or misleading in a material particular; and
- (c) the person knows that the answer or document is false or misleading in that particular.

Maximum penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the amount of a penalty unit by the resulting number. The amount of a penalty unit is stated in section 4AA of that Act.

Part 10—Penalty in lieu of prosecution

33 When an infringement notice can be served

If the Secretary has reason to believe that a person has committed an offence against section 28, the Secretary may cause an infringement notice to be served on the person in accordance with this Part.

34 Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) state that it is being served on behalf of the Secretary; and
 - (b) set out particulars of the alleged offence and the maximum penalty that a court could impose for the alleged offence; and
 - (c) if there is still any unpaid amount of tradex duty—state that the obligation to pay that amount continues despite the service of the infringement notice; and
 - (d) specify a penalty that is payable under the notice in respect of the alleged offence; and
 - (e) state that, if:
 - (i) the person on whom the notice is served does not wish the matter to be dealt with by a court; and
 - (ii) the person has paid any unpaid amount of tradex duty or pays any unpaid amount of tradex duty within the period of 28 days after the date of service of the notice; the person may pay to the Secretary within that period the amount of the penalty specified in the notice; and
 - (f) state where and how the penalty may be paid.
- Note: The Secretary has power to extend periods stated in notices given under paragraph (1)(e) (see section 43).
- (2) An infringement notice may contain any other matters that the Secretary considers necessary.

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- (3) The penalty to be specified in an infringement notice under paragraph (1)(d) is an amount equal to one-fifth of the tradex duty that was not paid by the person on whom the notice is served within the period applicable under subsection 21(3).

35 Withdrawal of infringement notice

- (1) The Secretary may withdraw an infringement notice served on a person by causing written notice of the withdrawal to be served on the person within the period within which the penalty specified in the infringement notice is required to be paid.
- (2) The matters to which the Secretary may have regard in deciding whether or not to withdraw an infringement notice include, but are not limited to, the following:
- (a) whether the person has previously been convicted of an offence against this Act;
 - (b) the circumstances in which the offence specified in the notice is alleged to have been committed;
 - (c) whether the person has previously been served with an infringement notice in respect of which the person paid the penalty specified in the notice.
- (3) If:
- (a) the person pays the penalty specified in the infringement notice within the period within which the penalty is required to be paid; and
 - (b) the notice is withdrawn after the person pays the penalty;
- the Secretary must refund to the person, out of money appropriated by the Parliament for the purpose, an amount equal to the amount paid.

36 What happens if unpaid tradex duty and penalty are paid

- (1) This section applies if:
- (a) an infringement notice is served on a person; and
 - (b) the person pays any unpaid tradex duty and the penalty specified in the notice before the end of the period referred to in paragraph 34(1)(e); and

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- (c) the infringement notice is not withdrawn.
- (2) Any liability of the person for the offence specified in the notice is taken to be discharged.
- (3) Further proceedings cannot be taken against the person for the offence.
- (4) The person is not regarded as having been convicted of the offence.

37 More than one infringement notice may not be served for the same offence

This Part does not permit the service of more than one infringement notice on a person for the same offence.

38 Infringement notice not required to be served etc.

This Part does not:

- (a) require an infringement notice to be served on a person in relation to an offence against section 28; or
- (b) affect the liability of a person to be prosecuted for an offence against section 28 if:
 - (i) an infringement notice is not served on the person in relation to the offence; or
 - (ii) an infringement notice served on the person in relation to the offence has been withdrawn; or
- (c) affect the liability of a person to be prosecuted for an offence against section 28 if the person does not comply with an infringement notice served on the person in relation to the offence; or
- (d) limit the amount of the penalty that may be imposed by a court on a person convicted of an offence against section 28.

Part 11—Miscellaneous

39 Reconsideration of certain decisions

- (1) If a decision is made by the Secretary:
 - (a) under section 11 refusing wholly or partly an application for a tradex order; or
 - (b) under section 13 refusing wholly or partly an application for the variation of a tradex order;the applicant may apply to the Secretary, within 28 days after the day on which the notice of the decision was given to the applicant, for reconsideration of the decision.
- (2) If a decision is made by the Secretary:
 - (a) under section 17 suspending a tradex order; or
 - (b) under section 19 revoking a tradex order;the holder of the order may apply to the Secretary, within 28 days after the day on which the notice of the decision was given to the holder, for reconsideration of the decision.
- (3) An application for reconsideration must:
 - (a) be in writing; and
 - (b) be in accordance with the approved form; and
 - (c) include the grounds on which the person seeks the reconsideration of the decision (whether or not those grounds had previously been considered); and
 - (d) be signed in the manner indicated in the form; and
 - (e) be lodged with the Secretary.
- (4) The Secretary must cause to be recorded the day on which an application for reconsideration of a decision is lodged.
- (5) The Secretary must decide, not later than 28 days after the day on which the application was lodged, whether to affirm the original decision or to substitute any other decision that the Secretary might have made.

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- (6) In reconsidering a decision, the Secretary may have regard to:
 - (a) the application for reconsideration and any submissions, information, documents and materials that the Secretary was entitled to take into account in making the decision; and
 - (b) any new matter produced to the Secretary by the applicant for reconsideration other than matter that was not produced to the Secretary before the end of the period within which the application for reconsideration was required to be made.
- (7) If the Secretary fails to make a decision on the reconsideration within the period referred to in subsection (5), the Secretary is taken, for the purposes of the reconsideration, to have made, at the end of that period, a decision to affirm the original decision.
- (8) The Secretary must cause to be given to the applicant a written notice:
 - (a) of his or her decision on the application for reconsideration; or
 - (b) if subsection (7) applied—of the decision that is taken by that subsection to have been made.

Note 1: The Secretary has power to extend periods referred to in subsections (1) and (2) (see section 43).

Note 2: For the right to have a decision on reconsideration reviewed by the Administrative Appeals Tribunal, see section 40.

40 Review of decisions by Administrative Appeals Tribunal

Application may be made to the Administrative Appeals Tribunal for the review of a decision by the Secretary under section 39 on a reconsideration of:

- (a) a decision of the Secretary under section 11 refusing wholly or partly an application for a tradex order; or
- (b) a decision of the Secretary under section 13 refusing wholly or partly an application for the variation of a tradex order; or
- (c) a decision of the Secretary under section 17 suspending a tradex order; or
- (d) a decision of the Secretary under section 19 revoking a tradex order.

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Note: Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must give to persons whose interests are affected by the decision a notification of the making of the decision and of their right to have the decision reviewed. In notifying any such persons, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.

41 Evidentiary matters

- (1) At the hearing of a prosecution for an offence against section 28, a certificate signed by the Secretary stating:
 - (a) that the Secretary did not allow a further period under section 43 for payment under subsection 21(3) of the tradex duty; and
 - (b) that the whole or a part of the tradex duty was not paid within the period applicable under that subsection;is evidence of those matters.
- (2) At the hearing of a prosecution for an offence against section 28, a certificate signed by the Secretary stating:
 - (a) that the Secretary allowed a further period under section 43 for payment under subsection 21(3) of the tradex duty; and
 - (b) that the whole or a part of the tradex duty was not paid before the end of the further period;is evidence of those matters.
- (3) At the hearing of a prosecution for an offence against section 28 in respect of which an infringement notice was served, a certificate signed by the Secretary stating:
 - (a) that the Secretary did not allow a further period under section 43 for payment under paragraph 34(1)(e) of any unpaid tradex duty and the penalty specified in the notice; and
 - (b) that the whole or a part of any unpaid tradex duty or of the penalty was not paid in accordance with the notice within the period applicable under that paragraph;is evidence of those matters.
- (4) At the hearing of a prosecution for an offence against section 28 in respect of which an infringement notice was served, a certificate signed by the Secretary stating:

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- (a) that the Secretary allowed a further period under section 43 for payment under paragraph 34(1)(e) of any unpaid tradex duty and the penalty specified in the notice; and
 - (b) that the whole or a part of any unpaid tradex duty or of the penalty was not paid in accordance with the notice before the end of the further period;
- is evidence of those matters.
- (5) At the hearing of a prosecution for an offence against section 28 in respect of which an infringement notice was served, a certificate signed by the Secretary stating that the notice was withdrawn on a day stated in the certificate is evidence of that fact.
- (6) A document that purports to be a certificate signed by the Secretary is taken to be such a certificate unless the contrary is proved.

42 Payment by cheque

If a cheque is tendered to the Secretary as payment of all or part of any tradex duty or as payment of all or part of the penalty specified in an infringement notice, payment is taken not to have been made unless the cheque is honoured upon presentation.

43 Power of Secretary to extend certain periods

- (1) For the purposes of the application of a provision of this Act referred to in subsection (4) in relation to a person, the Secretary may, by writing, extend the period referred to in the provision.
- (2) The power of the Secretary under subsection (1) to extend a period may be exercised before or after the end of the period.
- (3) If the Secretary extends a period under subsection (1), a reference in this Act or in a notice or other instrument under this Act to the period is taken, in relation to the person, to be a reference to the period as so extended.
- (4) The periods that may be extended under subsection (1) are the periods referred to in paragraphs 5(1)(c) and (2)(c), subsections 9(6), 10(3), 12(4) and 15(1), paragraph 16(b), subsection 21(3), paragraphs 24(2)(a) and 34(1)(e) and subsections 39(1) and (2).

44 Power of Secretary to approve forms

- (1) The Secretary may, by writing, approve a form for the purposes of a provision of this Act.
- (2) An approval under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

45 Authorised officers

- (1) The Secretary may, by writing, appoint persons to be authorised officers for the purposes of this Act.
- (2) The Secretary may cause an identity card to be issued to an authorised officer.
- (3) An identity card:
 - (a) is to incorporate a recent photograph of the person to whom it is issued; and
 - (b) is to contain:
 - (i) the person's signature; and
 - (ii) a unique number assigned to the person by the Secretary; and
 - (c) is to state that the person is an authorised officer for the purposes of this Act.
- (4) A person who ceases to be an authorised officer must, as soon as practicable after so ceasing, return his or her identity card to the Secretary.
- (5) A person is guilty of an offence if:
 - (a) an identity card was issued to the person; and
 - (b) the person has ceased to be an authorised officer; and
 - (c) the person fails to return the identity card as required by subsection (4).

Maximum penalty: 1 penalty unit.

- (6) In this section:

person means an individual.

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46 Tradex order not transmissible

To avoid doubt, a tradex order is not property that is transmissible by assignment, by contract, by will or by operation of law.

47 Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

48 Delegation

The Secretary may, by writing, delegate to an officer of, or a person employed in, the Department all or any of the Secretary's functions and powers under this Act.

49 Regulations

The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

including regulations about:

- (c) how applications, requests or notices under this Act are to be made or given to or lodged with the Secretary or an authorised officer; and
- (d) how notices or other documents under this Act are to be given by the Secretary or an authorised officer.

Part 12—Transitional

50 Existing users under the Texco Scheme

If a person:

- (a) was, immediately before the commencement of this Act, a user, in relation to goods of a particular kind or description, under the Texco Scheme; and
- (b) had, before that commencement, given a written notice to the Secretary (however the notice was expressed) to the effect that the person wished to import goods of that kind or description under the Tradex Scheme;

the Secretary must, as soon as practicable, make under section 11, in respect of goods of that kind or description, such a tradex order as would have been made if the person had duly made an application for the order under section 10.

*[Minister's second reading speech made in—
House of Representatives on 14 October 1999
Senate on 26 November 1999]*

(196/99)
