



Excise Amendment (Compliance Improvement) Act 2000

No. 115, 2000



Excise Amendment (Compliance Improvement) Act 2000

No. 115, 2000

An Act to amend the *Excise Act 1901*, and for related purposes

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
4	Regulations.....	2
Schedule 1—Amendment of the Excise Act 1901		3
Schedule 2—Transitional provisions		47



Excise Amendment (Compliance Improvement) Act 2000

No. 115, 2000

An Act to amend the *Excise Act 1901*, and for related purposes

[Assented to 7 September 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Excise Amendment (Compliance Improvement) Act 2000*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Regulations

- (1) The Governor-General may make regulations prescribing 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.
- (2) In particular, regulations may be made:
 - (a) for matters of a transitional, saving or application nature arising from the amendments made by this Act; and
 - (b) to require a person, being a person who is the holder of a manufacturer licence, storage licence, producer licence or dealer licence under Part IV of the *Excise Act 1901* (as amended by this Act) because of Schedule 2 to this Act, to provide information of the kind relevant to that Part; and
 - (c) to create offences and to provide for a maximum penalty, not exceeding 10 penalty units for a natural person and 50 penalty units for a body corporate, in respect of each offence.

Schedule 1—Amendment of the Excise Act 1901

1 Subsection 4(1) (definition of *approved place*)

Repeal the definition, substitute:

approved place means the premises specified in a storage licence.

2 Subsection 4(1)

Insert:

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

3 Subsection 4(1) (definition of *dealer*)

Repeal the definition.

4 Subsection 4(1)

Insert:

dealer licence means a licence granted under Part IV, the holding of which authorises the licence holder to deal in tobacco seed, tobacco plant or tobacco leaf.

5 Subsection 4(1) (definition of *factory*)

Omit “manufacturer”, substitute “licensed manufacturer”.

6 Subsection 4(1) (definition of *licence*)

Repeal the definition, substitute:

licence means a manufacturer licence, storage licence, producer licence or dealer licence.

7 Subsection 4(1)

Insert:

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

8 Subsection 4(1)

Insert:

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

9 Subsection 4(1)

Insert:

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

10 Subsection 4(1) (definition of *manufacturer*)

Repeal the definition.

11 Subsection 4(1)

Insert:

manufacturer licence means a licence granted under Part IV, the holding of which authorises the licence holder to manufacture excisable goods.

12 Subsection 4(1)

Insert:

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.

13 Subsection 4(1) (definition of *proclaimed material*)

Repeal the definition.

14 Subsection 4(1) (definition of *producer*)

Repeal the definition.

15 Subsection 4(1)

Insert:

producer licence means a licence granted under Part IV, the holding of which authorises the licence holder to produce tobacco seed, tobacco plant or tobacco leaf.

16 Subsection 4(1)

Insert:

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

17 Subsection 4(1)

Insert:

storage licence means a licence granted under Part IV, the holding of which authorises the licence holder:

- (a) to keep and store goods that are:
 - (i) excisable goods on which duty has not been paid; and
 - (ii) of the kind specified in the licence;at the premises specified in the licence; and
- (b) carry out at the premises activities of a kind specified in the licence in relation to those goods.

18 Subsection 4(1) (definition of *The Proprietor*)

Repeal the definition.

19 Subsection 4(1)

Insert:

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.

20 Section 5A

Repeal the section.

21 After section 6

Insert:

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.
- (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.

22 Section 14

Repeal the section.

23 Section 15

Omit all the words after “relating to”, substitute “licences”.

24 At the end of section 15

Add:

- (2) However, during that 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
 - (b) the premises on which the person manufactures those goods are taken to be a factory.

25 Section 23

Repeal the section.

26 Parts III and IV

Repeal the Parts, substitute:

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.

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 specified in the manufacturer licence knowing, or being reckless as to whether, the goods are excisable goods and:

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

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 specified in 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 specified in the producer licence; or
- (b) being reckless as to whether the premises are specified in 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 specified in 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 specified in 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 specified in the producer licence; or
 - (b) being reckless as to whether the premises are specified in 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 specified in the producer licence.

Penalty: 100 penalty units.

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

32 Accounts and returns for licensed producers

- (1) A person who:
- (a) is a licensed producer; or
 - (b) having been a licensed producer, has ceased to be a licensed producer;

must, with respect to tobacco seed, tobacco plant or tobacco leaf produced by the licensed producer, keep accounts and make returns in accordance with the regulations.

Penalty: 30 penalty units.

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

- (2) Strict liability applies to subsection (1).

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

Penalty: 100 penalty units.

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

37 Accounts and returns for licensed dealers

- (1) A person who:
- (a) is a licensed dealer; or
 - (b) having been a licensed dealer, has ceased to be a licensed dealer;

must, with respect to tobacco seed, tobacco plant or tobacco leaf dealt in by the licensed dealer, keep accounts and make returns in accordance with the regulations.

Penalty: 30 penalty units.

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

- (2) Strict liability applies to subsection (1).

27 After Part III

Insert:

Part IV—Manufacturer, storage, producer and dealer licences

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), (d), (e) and (f); and
 - (d) contain a description of the 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
 - (f) in relation to an application for a manufacturer licence—be accompanied by the prescribed fee (if any); 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 grant, or refuse to grant, a 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
 - (d) an employee of the applicant who would participate in the management or control of the premises in relation to which the licence is sought 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
 - (g) in relation to an application for a manufacturer licence or storage licence—the physical security of the premises in relation to which the licence is sought 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
 - (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
 - (i) in relation to an application for a manufacturer licence or storage licence—the plant and equipment that would be used in relation to goods at the premises in relation to which the licence is sought are not suitable having regard to the nature of those goods and the premises; 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.
- (3) If the application is for a producer licence or dealer licence, the Collector must not refuse to grant the licence under paragraph (2)(a), (b), (c), (d) or (f) 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 making the application, 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 making the application, 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

- (c) whether the person has:
 - (i) held a licence which has been cancelled; or
 - (ii) participated in the management or control of a company that has had its licence cancelled; and
- (d) whether the person is an undischarged bankrupt; and
- (e) any misleading statement made in the application by the person; and
- (f) where 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 making the application, the company 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 a fine of 50 penalty units or more; and
- (b) whether, within 10 years before making the application, 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
- (c) whether the company has held a licence that has been cancelled; 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 Law; and
- (f) whether the company has executed under Part 5.3A of that Law a deed of company arrangement that has not yet terminated; and
- (g) whether the company has been placed under official management; 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 the premises specified in 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 the premises specified in 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);
 - (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 Law;

- (v) the company executes a deed of company arrangement under Part 5.3A of that Law;
 - (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 the premises specified in the licence; or
 - (ii) the plant or equipment used in relation to goods at the premises specified in 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 specified in the licence;
 - (i) in relation to a manufacturer licence—the licence holder has ceased to manufacture excisable goods;
 - (j) in relation to a storage licence—the licence holder has ceased to keep and store goods at the premises specified in 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 Collector to be necessary or desirable for the protection of the revenue or for the purpose of ensuring compliance with the Excise Acts.
- (4) The Collector may, upon application by the licence holder and upon the production of the licence, vary the conditions specified in the licence by making an alteration to, or an endorsement on, the licence.

39E Duration of licences

- (1) A manufacturer licence comes into force on the day the licence is granted and remains in force, unless cancelled earlier, until:
-

- (a) 31 December (the *expiry day*) after:
 - (i) the day of grant; or
 - (ii) the day of renewal or last renewal; or
 - (b) if an application for renewal has been made before the expiry day but the Collector has not made a decision whether to renew before the expiry day—such other day as the Collector determines in writing.
- (2) A producer licence, dealer licence or storage licence comes into force on the day the licence is granted and remains in force unless it is cancelled.

39F Renewal of manufacturer licences

- (1) The Collector may, by writing, renew a manufacturer licence on the written application of the licence holder.
- (2) Where a manufacturer 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.

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
 - (d) an employee of the licence holder who participates in the management or control of the premises specified in the licence 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
 - (g) in relation to a manufacturer licence or storage licence—the physical security of the premises specified in the licence 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
 - (h) in relation to a producer licence or dealer licence—the physical security of the storage place on the premises specified in 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
 - (i) in relation to a manufacturer licence or storage licence—the plant and equipment used at the premises specified in the licence are such that the protection of the revenue in relation to goods at the premises is inadequate; 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 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
 - (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.
- (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), (d) and (f), 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
- (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
 - (ii) has participated in the management or control of a company that has had its licence cancelled.

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
- (c) the matters referred to in paragraphs 39C(d) to (h).

39J Method of suspension

- (1) If the Collector decides to suspend a licence, 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 the premises specified in the licence.
- (3) The notice:
- (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.
- (5) If the licence is suspended, the Collector:
- (a) may at any time revoke the suspension; and
 - (b) if the licence has not been cancelled within 28 days after the day on which the licence was suspended—must revoke the suspension.

39K Activities that are prohibited during suspension

- (1) During a period in which a licence is suspended, the licence holder must not, without permission under subsection (6):
- (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 storage licence—intentionally keep or store excisable goods at the premises specified in 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.

- (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 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, the licence holder must not, without permission under subsection (6):
-

- (a) for a manufacturer licence—manufacture excisable goods; and
- (b) for a storage licence—keep or store excisable goods at the premises specified in 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, producer licence or dealer licence—keep or store tobacco leaf.

Penalty: 100 penalty units.

- (5) Strict liability applies to subsection (4).
- (6) During a period in which the licence is suspended, the Collector may:
 - (a) give written permission for goods to be kept or stored at the premises specified in the licence; and
 - (b) give written permission for a process to be carried out at the premises specified in the licence; and
 - (c) give written permission for the movement of goods from the premises specified in the licence to another place; and
 - (d) by written notice, in a manner prescribed by the regulations, to the owner of goods at the premises specified in the licence, require him or her to remove the goods to another place approved by the Collector; and
 - (e) take such control of the premises specified in the licence and of any goods at the 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.

39L Cancellation of licences

- (1) The Collector may cancel a licence if the Collector is entitled to suspend the licence under section 39G.
- (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 the premises specified in the licence.
- (4) If the Collector cancels the licence, the Collector must by written notice inform the owner of excisable goods at the premises specified in 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 the premises specified in 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).

Division 5—Dealing with goods after cancellation etc.

39M Removal of goods on cancellation etc. of licence

- (1) If a licence has been cancelled, or has expired and has not been renewed, a person must not, without permission, intentionally remove from the premises that were specified in 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.

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

- (2) If a licence has been cancelled, or has expired and has not been renewed, a person must not, without permission, intentionally remove from the premises that were specified in the licence 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.

- (3) If a licence has been cancelled, or has expired and has not been renewed, a person must not, without permission, remove from the premises that were specified in the licence:
 - (a) any excisable goods the duty on which has not been paid; or
 - (b) any tobacco seed, tobacco plant or tobacco leaf.

Penalty: 100 penalty units.

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

39N Removal of goods by Collector on cancellation etc. of licence

- (1) If a licence has been cancelled, or has expired and has not been renewed, the Collector may cause:
 - (a) any excisable goods on which duty has not been paid that are at the premises specified in the licence; 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 the goods if after 6 months after removing the goods under subsection (1):
 - (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 the premises specified in 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).

Part IVA—Control of tobacco seed, plant and leaf

44 Permission to move tobacco leaf

- (1) The Collector may give written permission to a person specified in the permission to move tobacco leaf from a place specified in the permission to another place so specified.
- (2) It is a requirement of the permission that a tobacco bale label must be affixed to the tobacco leaf at all times when the tobacco leaf is

not at premises specified in 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 requirements as are specified in the permission, being requirements 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 requirement under subsection (2) or specified in the permission under subsection (3).

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.

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

Penalty: 100 penalty units.

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

28 Sections 47, 48 and 49

Omit “manufacturer”, substitute “licensed manufacturer”.

29 Subsection 50(1)

Omit “manufacturer”, substitute “licensed manufacturer”.

30 Subsection 50(1) (penalty)

Omit “\$2,000”, substitute “30 penalty units”.

31 At the end of subsection 50(1)

Add:

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

32 After subsection 50(1)

Insert:

(1A) Strict liability applies to subsection (1).

33 Section 51

Omit “manufacturer” (wherever occurring), substitute “licensed manufacturer”.

34 Sections 52 and 53

Omit “manufacturer”, substitute “licensed manufacturer”.

35 Section 53

Omit “proclaimed material”, substitute “tobacco leaf”.

36 Subsections 54(1), 58(1) and 60(1)

Omit “manufacturer”, substitute “licensed manufacturer”.

37 Section 61

Repeal the section, substitute:

61 Customs control

- (1) All excisable goods are subject to the control of Customs 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 control of Customs knowing, or being reckless as to whether, the goods are excisable goods that are subject to the control of Customs.

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 control of Customs.

Penalty: 100 penalty units.

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

38 Subsection 61A(4)

Repeal the subsection, substitute:

- (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 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.

- (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 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.

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

Penalty: 100 penalty units.

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

39 Subsection 61C(4)

Repeal the subsection, substitute:

- (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 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).

40 Sections 62, 67, 70 and 76

Omit “manufacturer”, substitute “licensed manufacturer”.

41 At the end of section 86

Add:

- (3) Officers may at all times have complete access to every part of premises specified in a producer licence or dealer licence and may examine and take account of the goods (including crops) at the premises.

42 Paragraph 87(1)(b)

Repeal the paragraph, substitute:

- (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
- (ii) excisable goods that are subject to the control of Customs (within the meaning of subsection 61(1)) in or on the conveyance.

43 Subsection 87(6) (definition of *conveyance*)

Repeal the definition.

44 Subsection 87(6) (definition of *Excise place*)

Repeal the definition, substitute:

Excise place means:

- (a) a factory; or
- (b) an approved place; or
- (c) the premises specified in a producer licence or dealer licence.

45 After section 87

Insert:

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
- (b) the conveyance has been used, is being used or is intended to be used in the commission of an offence against a provision of the Excise Acts or section 5, 6, 7 or 86 of the *Crimes Act 1914*.

46 Section 105

Omit “proclaimed material”, substitute “tobacco leaf”.

47 At the end of section 105

Add “and entered into home consumption on the day on which the deficiency is found”.

48 Paragraph 116(1)(a)

Omit “not licensed under this Act”, substitute “who is not a licensed manufacturer”.

49 Paragraph 116(1)(b)

Omit “proclaimed material”, substitute “tobacco seed, tobacco plant or tobacco leaf”.

50 After paragraph 116(1)(b)

Insert:

- (ba) all 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 specified in a producer licence, dealer licence or manufacturer licence;

51 Subsection 116(2)

Omit “not licensed under this Act”, substitute “who is not a licensed manufacturer”.

52 Section 117

Repeal the section, substitute:

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.

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

- (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).

117C Unlawful possession of tobacco seed, plant or leaf

- (1) A person (other than a licensed producer, licensed dealer or licensed manufacturer) must not, without permission, intentionally possess, or have custody or control of, 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 (other than a licensed producer, licensed dealer or licensed manufacturer) must not, without permission, possess, or have custody or control of, tobacco seed, tobacco plant or tobacco leaf.

Penalty: 100 penalty units.

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

117D Unlawfully moving tobacco leaf

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

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

Penalty: 100 penalty units.

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

117E Unlawfully buying tobacco seed or plant

- (1) A person must not intentionally buy material that is tobacco seed or tobacco plant from another person who is not a licensed producer or licensed dealer knowing, or being reckless as to whether, the material is tobacco seed or tobacco plant and:

- (a) knowing the other person is not a licensed producer or licensed dealer; or
- (b) being reckless as to whether the other person is a licensed producer or licensed dealer.

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 person must not buy tobacco seed or tobacco plant from a person who is not a licensed producer or licensed dealer.

Penalty: 100 penalty units.

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

117F Unlawfully buying tobacco leaf

- (1) A person must not intentionally buy material that is tobacco leaf from another person who is not a licensed producer, licensed dealer or licensed manufacturer knowing, or being reckless as to whether, the material is tobacco leaf and:

- (a) knowing the other person is not a licensed producer, licensed dealer or licensed manufacturer; or
- (b) being reckless as to whether the other person is a licensed producer, licensed dealer or licensed manufacturer.

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.

- (2) A person must not buy tobacco leaf from a person who is not a licensed producer, licensed dealer or licensed manufacturer.

Penalty: 100 penalty units.

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

117G Unlawfully selling tobacco seed or plant

- (1) A person must not intentionally sell material that is tobacco seed or tobacco plant to another person who is not a licensed producer, licensed dealer or licensed manufacturer knowing, or being reckless as to whether, the material is tobacco seed or tobacco plant and:
- (a) knowing the other person is not a licensed producer, licensed dealer or licensed manufacturer; or
 - (b) being reckless as to whether the other person is a licensed producer, licensed dealer or licensed manufacturer.

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 person must not sell tobacco seed or tobacco plant to a person who is not a licensed producer, licensed dealer or licensed manufacturer.

Penalty: 100 penalty units.

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

117H Unlawfully selling tobacco leaf

- (1) A person must not intentionally sell material that is tobacco leaf to another person who is not a licensed dealer or licensed manufacturer knowing, or being reckless as to whether, the material is tobacco leaf and:
- (a) knowing the other person is not a licensed dealer or licensed manufacturer; or
 - (b) being reckless as to whether the other person is a licensed dealer or licensed manufacturer.

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.

- (2) A person must not sell tobacco leaf to a person who is not a licensed dealer or licensed manufacturer.

Penalty: 100 penalty units.

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

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).

53 Section 119

Repeal the section.

54 Subparagraphs 120(1)(ii) and (iii)

Repeal the subparagraphs.

55 Paragraph 120(2)(a)

Omit “(ii), (iii),”.

56 Section 120A

Repeal the section.

57 Before section 128

Insert:

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, 117C, 117D, 117E, 117F, 117G, 117H or 117I;
and
 - (b) a person is convicted of an offence against that provision;
- then the court may impose both penalties on the person.

58 Section 129

Repeal the section.

59 Before Part XI

Insert:

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) 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), 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:
 - (i) by posting or delivering the payment to the place of payment stated in the notice; or
 - (ii) in any other 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.
- (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.

60 Subsection 134(2)

Omit "\$20,000" (wherever occurring), substitute "\$40,000".

61 Subsection 134(4)

Omit "\$5,000" (wherever occurring), substitute "\$20,000".

62 Application of items 60 and 61

The amendments made by items 60 and 61 apply to Excise prosecutions instituted on or after the day on which this item commences, whether or not the prosecutions are in relation to penalties incurred, or goods seized, before, on or after that day.

63 Section 162A

Repeal the section.

64 Subsection 162B(1)

Omit “162A”, substitute “39N”.

65 Paragraph 162B(5)(c)

Omit “162A”, substitute “39N”.

66 Paragraphs 162C(1)(a), (b) and (c)

Repeal the paragraphs.

67 Schedules II, III, IV, V, VI and VII

Repeal the Schedules.

68 The whole of the Act

Amend so that every occurrence of “he” is followed once by “or she”.

69 The whole of the Act

Amend so that every occurrence of “him” is followed once by “or her”.

70 The whole of the Act

Amend so that every occurrence of “himself” is followed once by “or herself”.

71 The whole of the Act

Amend so that every occurrence of “his” is followed once by “or her”.

Schedule 2—Transitional provisions

1 Definitions

In this Schedule:

new Act means the *Excise Act 1901* as amended by this Act.

old Act means the *Excise Act 1901* as in force immediately before the commencement of this Act.

2 Declarations under section 5A

- (1) A person who is a proprietor of an approved place under section 5A of the old Act immediately before the commencement of this item is taken, with respect from that time, to be the holder of a storage licence granted at that time under Part IV of the new Act.
- (2) The approved place of which the person is the proprietor is taken, with respect from that time, to be the approved place specified in the storage licence.

3 Regulations under section 14

Regulations made under section 14 of the old Act that are in force immediately before the commencement of this item are taken, with respect from that time, to have been made under paragraph 39(2)(f) of the new Act.

4 Registered producers

- (1) A person who is registered as a producer under Part III of the old Act immediately before the commencement of this item is taken, with respect from that time, to be the holder of a producer licence granted at that time under Part IV of the new Act.
- (2) The premises in respect of which the person was registered is taken, with respect from that time, to be the premises specified in the producer licence.

5 Registered dealers

- (1) A person who is registered as a dealer under Part III of the old Act immediately before the commencement of this item is taken, with

respect from that time, to be the holder of a dealer licence granted at that time under Part IV of the new Act.

- (2) The premises in respect of which the person was registered is taken, with respect from that time, to be the premises specified in the dealer licence.

6 Permissions under section 29

A permission granted under section 29 of the old Act that is in force immediately before the commencement of this item is taken, with respect from that time, to be a permission granted under:

- (a) if the permission is in relation to a producer—section 30 of the new Act; and
- (b) if the permission is in relation to a dealer—section 35 of the new Act.

7 Regulations under section 33

Regulations made under section 33 of the old Act that are in force immediately before the commencement of this item are taken, with respect from that time, to have been made under:

- (a) to the extent that the regulations are in relation to a producer—section 32 of the new Act; and
- (b) to the extent that the regulations are in relation to a dealer—section 37 of the new Act.

8 Securities under section 39

A security given under section 39 of the old Act that is in force immediately before the commencement of this item is taken, with respect from that time, to have been given at that time under section 16 of the new Act.

9 Manufacturing licences

- (1) If:
- (a) an application for a licence was made under section 37 of the old Act; and
 - (b) immediately before the commencement of this item, the Collector had not made a decision whether to grant or refuse the licence;

the application is taken, with respect from that time, to be an application for a manufacturing licence made at that time under section 39 of the new Act.

- (2) A manufacturing licence granted under Part IV of the old Act that is in force immediately before the commencement of this item is taken, with respect from that time, to be a manufacturer licence granted at that time under Part IV of the new Act.
- (3) The premises in respect of which the person was licensed is taken, with respect from that time, to be the premises specified in the manufacturer licence.

10 Information given under the regulations

If:

- (a) regulations made under section 4 of this Act require a person, being a person who is the holder of a manufacturer licence, storage licence, producer licence or dealer licence under Part IV of the new Act because of this Schedule, to provide information of the kind relevant to that Part; and
- (b) the person provides that information;

the information is taken to be information provided by the person in an application under section 39 of the new Act.

*[Minister's second reading speech made in—
House of Representatives on 21 June 2000
Senate on 22 June 2000*