Tradex Scheme Amendment Act 2008

No. 18, 2008

An Act to amend the Tradex Scheme Act 1999, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)
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An Act to amend the Tradex Scheme Act 1999, and for related purposes

[Assented to 8 April 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Tradex Scheme Amendment Act 2008.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
## Commencement information

<table>
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<th>Column 1</th>
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<td><strong>Provision(s)</strong></td>
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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>8 April 2008</td>
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<tr>
<td>2. Schedule 1</td>
<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
<td>8 October 2008</td>
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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

*Tradex Scheme Act 1999*

1 Section 4 (definition of *Drawback Regulations*)
   Repeal the definition.

2 Section 4 (definition of *exempt class of goods*)
   Repeal the definition.

3 Section 4 (definition of *requirements of the Drawback Regulations*)
   Repeal the definition.

4 Paragraph 5(1)(b)
   Repeal the paragraph, substitute:
   
   (b) that the requirements of regulations made for the purposes of
   this paragraph are met in relation to the nominated goods;

5 Application—amendment of subsection 5(1)
   The amendment of subsection 5(1) of the *Tradex Scheme Act 1999*
   made by this Schedule applies in relation to:
   
   (a) an application made, but not determined, before the
   commencement of this Schedule; and
   
   (b) an application made on or after the commencement of this
   Schedule.

6 Paragraph 5(2)(b)
   Repeal the paragraph, substitute:
   
   (b) that the requirements of regulations made for the purposes of
   this paragraph have been met in relation to all of the
   nominated goods that have been exported; and

7 Application—amendment of subsection 5(2)
The amendment of subsection 5(2) of the *Tradex Scheme Act 1999* made by this Schedule applies in relation to nominated goods exported on or after the commencement of this Schedule (whether the tradex order in respect of which the goods are nominated goods was made before or after that commencement).

**8 Paragraph 10(3)(b)**

Omit “Drawback Regulations will be complied with in respect of such of the goods as not included in an exempt class of goods”, substitute “regulations will be met in relation to the nominated goods”.

**9 Subsection 11(1)**

Omit “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*”, substitute “specifying the nominated goods in respect of which the Secretary is satisfied as mentioned in paragraph (a)”.

**10 Subsection 11(8)**

Repeal the subsection.

**11 Section 16**

Before “If”, insert “(1)”.

**12 Section 16 (note)**

Omit “paragraph 16(b)”, substitute “paragraph 16(1)(b)”.

**13 At the end of section 16**

Add:

(2) If the Secretary is of the opinion that the holder of a tradex order does not intend to export nominated goods to which the order applies, the Secretary may give the holder a written notice:

(a) setting out the Secretary’s opinion; and

(b) inviting the holder to give the Secretary, within 28 days after the day on which the notice is received by the holder, written evidence that the holder intends to export the nominated goods.

**Note:** The Secretary has power to extend the period referred to in paragraph 16(2)(b) (see section 43).
14 **Paragraph 17(1)(b)**

Repeal the paragraph, substitute:

(b) believes on reasonable grounds that:
   (i) any disqualifying circumstances exist in relation to the holder; or
   (ii) the holder does not intend to export the nominated goods; and

15 **Paragraph 19(1)(b)**

Omit “section 16”, substitute “subsection 16(1)”.

16 **Subsection 19(1) (note)**

Repeal the note, substitute:

Note: A decision under subsection (1) to revoke a tradex order is reviewable (see section 39).

17 **After subsection 19(1)**

Insert:

(1A) If:
   (a) the Secretary has given the holder of a tradex order a notice under subsection 16(2); and
   (b) the holder does not satisfy the Secretary, within the period stated in the notice, that the holder intends to export the goods referred to in the notice;

   the Secretary may revoke the tradex order.

Note: A decision under subsection (1A) to revoke a tradex order is reviewable (see section 39).

18 **After section 19**

Insert:

19A **Revocation of tradex order if holder cannot be contacted**

(1) If, after reasonable attempts to contact the holder of a tradex order, the Secretary is satisfied that the holder cannot be contacted, the Secretary may revoke the tradex order.

Note: A decision under subsection (1) to revoke a tradex order is reviewable (see section 39).
(2) The revocation of the tradex order:
   (a) must be done by written instrument; and
   (b) comes into force on the date specified in the instrument.

(3) If a tradex order is revoked under this section, the Secretary must enter in the Register a statement that the order has been revoked and the date on which the revocation comes into force.

19 Subsection 21(1)
Repeal the subsection, substitute:

(1) This section applies if, in respect of either of the following:
   (a) goods that are nominated goods in relation to a tradex order;
   (b) goods that are nominated goods in relation to a suspended or revoked tradex order and that were imported before that suspension or revocation;
any of the following circumstances occur:
   (c) the goods are consumed or used by the holder in Australia;
   (d) 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;
   (e) a requirement of the regulations is not met in relation to the goods;
   (f) the goods are not exported before the end of the period that applies under paragraph 5(2)(c) (otherwise than because the goods were accidentally destroyed or accidentally damaged).

20 Paragraph 21(3)(a)
Omit “paragraph (1)(a)”, substitute “paragraph (1)(c)”.

21 Paragraph 21(3)(b)
Omit “paragraph (1)(b)”, substitute “paragraph (1)(d)”.

22 Paragraph 21(3)(c)
Repeal the paragraph, substitute:
   (c) the day on which the requirement of the regulations is not met in relation to the goods;

23 Paragraph 21(3)(d)
Omit “paragraph (1)(d)”, substitute “paragraph (1)(f)”.  

24 **Subsection 21(6)**

Insert:

> **holder** includes the person who was the holder of a suspended or revoked tradex order.

25 **Paragraph 39(2)(b)**

After “19”, insert “or 19A”.

26 **Paragraph 40(d)**

After “19”, insert “or 19A”.

27 **After section 40**

Insert:

40A **Evidentiary matters in relation to tradex duty liability**

(1) If the Secretary believes on reasonable grounds that the circumstance referred to in paragraph 21(1)(f) has occurred in respect of either of the following:

(a) goods that are nominated goods in relation to a tradex order;

(b) goods that are nominated goods in relation to a suspended or revoked tradex order and that were imported before that suspension or revocation;

the Secretary may issue an evidentiary certificate stating that the circumstance has occurred in relation to those goods.

(2) As soon as practicable after issuing the certificate, the Secretary must give a copy to the person who is or was the holder of the tradex order.

(3) The certificate is, in any proceedings, prima facie evidence of the matters stated in the certificate.

Note: The heading to section 41 is replaced by the heading “Other evidentiary matters”.

28 **After section 42**

Insert:
42A Refund of overpaid tradex duty

(1) If an amount of tradex duty has been overpaid by a person, the Commonwealth must, on request by the person, refund the amount of the overpayment.

(2) A request by a person for the purposes of subsection (1):
   (a) must be made in writing; and
   (b) must be made no later than 4 years after the overpayment was made.

29 Subsection 43(4)

Omit “paragraph 16(b)”, substitute “paragraphs 16(1)(b) and (2)(b)”.

30 Subsection 44(1)

Omit “(1)”.

31 Subsection 44(2)

Repeal the subsection.

[Minister’s second reading speech made in—
House of Representatives on 21 February 2008
Senate on 20 March 2008]