

Spirits Amendment Regulations 2002 (No. 1) 2002 No. 303

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 303

Issued by authority of the Minister for Revenue and Assistant Treasurer

Spirits Act 1906

Spirits Amendment Regulations 2002 (No. 1)

Section 26 of the *Spirits Act 1906* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to ensure that offence creating provisions in existing Regulations continue to operate in the same manner following the application of the Criminal Code to all Commonwealth legislation.

The Criminal Code was enacted in the *Criminal Code Act 1995*. It provides a consistent framework for the interpretation of all criminal provisions. The Criminal Code commenced to apply to new offences from 1 January 1997 and to existing provisions from 15 December 2001.

The amended Regulations are those which create offences within the Spirits Regulations 1926. The global offence provision has been repealed. This general provision provided a penalty upon conviction for contravention of the regulations. The amendments will insert the penalty at the foot of each offence. They also ensure that offences of strict liability remain so since the introduction of the Criminal Code. The amendments clarify the defences available to some offences. They also set out the fault elements of some of the offences.

Details of the Regulations are set out in the Attachment.

The Regulations commenced on gazettal.

ATTACHMENT

Spirits Act Amendment Regulations 2002 (No. 1)

Explanation of the Amendments

Regulation 1 - specifies the name of the Regulations as the Spirits Amendment, Regulations 2002 (No. 1).

Regulation 2 - provides that the Regulations commence on gazettal.

Regulation 3 - provides that Schedule 1 amends the Spirits Regulations 1926.

Schedule 1 - Amendments to the Spirits Regulations 1926

Regulations 19, 26A, 27, 28, 30C, 30F, 31, 34, 36, 44, 45, 51, 53, 57, 58, and 59 are all strict liability offences. In each case a subregulation has been inserted to ensure that the offence continues to be interpreted in this way.

An offence of strict liability is an offence where no fault elements apply to the physical elements of the offence. For an offence of strict liability the defence of reasonable mistake of fact under section 9.2 of the Criminal Code is available. Strict liability is described in section 6.1 of the Criminal Code.

The Criminal Code requires that provisions that create an offence of strict liability must expressly state that they are strict liability offences. If the provision does not specifically state this, the offence is not a strict liability offence.

Regulation 19

Regulation 19 deals with the standard for special purpose. The offences in Regulation 19 have been restructured to clarify elements of the offences, and reworded using simpler language. These changes do not change the operation or the effect of the offence provisions. As a result of this rewording, the offence contained in Regulation 19 has been put into Subregulation 19(1), including inserting a penalty at the foot of the subregulation. Subregulation 19(2) has been inserted to provide that Subregulation 19(1) is an offence of strict liability and ensures that it continues to be so.

A further amendment to Regulation 19 is the replacement of the term *Comptroller* with *CEO*. The term *Comptroller* is no longer used and *CEO* is the correct term.

Regulations 26 and 26A

Regulation 26 deals with permission required for removal of methylated spirits from premises of the manufacturer where their use is authorised. The offences in Regulation 26 have been restructured to clarify elements of the offences, and reworded using simpler language. These changes do not change the operation or the effect of the offence provisions. As a result of this rewording, the offences contained in Regulation 26 have been put into two regulations, Regulation 26 and 26A.

Regulation 26 contains the offence in relation to the removal of methylated spirits. The offence is in Subregulation 26(1) and this also includes the penalty of 1 penalty unit for the offence, which has been inserted at the foot of the subregulation. Subregulation 26(2) has been inserted to

provide that Subregulation 26(1) is an offence of strict liability and ensures that it continues to be so.

Regulation 26A contains the offence in relation to the use of methylated spirits only for the purpose approved by the Collector. The offence is in Subregulation 26A(1), which also has the penalty at the foot of the subregulation. Subregulation 26A(2) has been inserted to provide that Subregulation 26A(1) is an offence of strict liability and ensures that it continues to be so.

Regulation 27

Subregulation 27(1) is an offence in relation to the keeping of records of use of methylated spirits. A penalty of 1 penalty unit has been inserted at the foot of Subregulation 27(1). Subregulation 27(2) has been inserted to provide that Subregulation 27(1) is an offence of strict liability and ensures that it continues to be so.

Regulation 28

The offences in Regulation 28 have been restructured to clarify elements of the offences, and reworded using simpler language. These changes do not change the operation or the effect of the offence provisions. As a result of this rewording, the offences have been broken into two subregulations, Subregulation 28(1) and 28(2). Subregulation 28(1) makes it an offence for a person to recover methylated spirits unless it is in premises approved by the Collector. Subregulation 28(2) requires a person to comply with conditions imposed by the CEO and directions by the Collector. A penalty for each offence appears at the foot of the subregulations. Subregulation 28(3) has been inserted to provide that Subregulations 28(1) and 28(2) are offences of strict liability and ensures that they continue to be so.

Regulation 30C

The Regulation 30C has been restructured to clarify the elements of the regulation, and reworded using simpler language. These changes do not change the operation or the effect of the offence provisions. As a result of this rewording, the offences have been broken into five subregulations, Subregulations 30C(1) to 30C(5). A penalty for each offence contained in Subregulations 30C(1), 30C(2) and 30C (4) appears at the foot of the subregulations. Subregulation 30C(5) has been inserted to provide that Subregulations 30C(1), 30C (2) and 30C(4) are offences of strict liability and ensure that they continue to be so.

Subregulation 30C(3) contains a defence to Subregulation 30C(2) that the Collector has permitted the removal of the methylated spirits from the premises where they are to be used. A note has also been inserted to state that the defendant bears an evidential burden for the defence.

Regulation 30F

Regulation 30F requires a record of the use of methylated spirits to be kept. The regulation has been restructured to clarify the elements of the regulation, and reworded using simpler language. Subregulation 30F(1) requires records to be kept of the methylated spirits received and the manner in which they are used. Subregulation 30F(2) provides that this is a strict liability offence. The penalty of 1 penalty unit for the provisions has also been inserted to ensure that the penalty is clear on the face of the offence.

Subregulation 30F(3) provides a defence to Subregulation 30F(1) if the Collector has authorised the person not to keep the record. A note has also been inserted to state that the defendant bears an evidential burden for the defence.

Regulation 31

Regulation 31 deals with the standard of methylation for purposes of the Part. The regulation has been restructured to clarify the elements of the regulation and reworded using simpler language. Subregulation 31(1) requires spirits to contain a certain percentage of alcohol and be methylated in a certain manner. The penalty for this offence is 1 penalty unit. Subregulation 31(2) has been inserted to provide that Subregulation 31(1) is an offence of strict liability and ensures that it continues to be so.

Regulation 34

Regulation 34 requires methylated spirits to be removed to premises for which approval has been given. The regulation has been restructured to clarify the elements of the regulation and reworded using simpler language. Subregulation 34(1) relates to the removal of methylated spirits to premises for which approval is given. A penalty of 1 penalty unit has been inserted at the foot of Subregulation 34(1). Subregulation 34(2) has been inserted to provide that Subregulation 34(1) is an offence of strict liability and ensures that it continues to be so.

Regulation 36

Regulation 36 requires a record to be kept of the use of methylated spirits. The regulation has been restructured to clarify the elements of the regulation and reworded using simpler language. Subregulation 36(1) requires a person to keep a record of the particulars of methylated spirits received and how the methylated spirits have been used. A penalty of 1 penalty unit has been inserted at the foot of Subregulation 36(1). Subregulation 36(2) has been inserted to provide that Subregulation 36(1) is an offence of strict liability and ensures that it continues to be so.

Subregulation 36(3) is a defence to Subregulation 36(1). It provides that a defence to the prosecution under Subregulation 36(1) is that the Collector authorised the person not to keep the record. A note has also been inserted to state that the defendant bears an evidential burden for the defence.

Regulation 44

Regulation 44 deals with the delivery of methylated spirits. Subregulation 44(1) makes it an offence to deliver methylated spirits to any person. Subregulation 44(2) has been inserted to provide that Subregulation 44(1) is an offence of strict liability and ensures that it continues to be so.

Regulation 45

Regulation 45 deals with the marking of particular containers of methylated spirits. Subregulation 45(1) has been retained but a penalty of 1 penalty unit has been inserted at the foot of the subregulation. Subregulation 45(2) makes it an offence to alter or erase particulars on a container of methylated spirits. The subregulation has a penalty of 1 penalty unit. Subregulation 45(3) has been inserted to provide that Subregulations 45(1) and 45(2) are offences of strict liability and ensures that they continue to be so.

Regulation 51

Regulation 51 deals with the authority and place to methylate spirits. Subregulation 51(3) has been reworded to make it an offence to methylate spirits except in certain places. A penalty of 1 penalty unit has been inserted at the foot of subregulation. Subregulation 51(3A) has been inserted to provide that Subregulation 51(3) is an offence of strict liability and ensures that it continues to be so.

Regulation 53

Regulation 53 deals with possession of methylated spirits to be authorised. The regulation has been restructured to clarify the elements of the regulation and reworded using simpler language. Subregulation 53(1) makes it an offence for a person who is not a methylator to receive or possess methylated spirits. A penalty of 1 penalty unit has been inserted at the foot of the subregulation. Subregulation 53(2) has been inserted to provide that Subregulation 53(1) is an offence of strict liability and ensures that it continues to be so.

Subregulation 53(3) is a defence to Subregulation 53(1). It provides that a defence to the prosecution under Subregulation 53(1) is that the Collector authorised the person to receive or possess the methylated spirits. A note has also been inserted to state that the defendant bears an evidential burden for the defence.

Regulation 57

Regulation 57 deals with the requirement for containers to be distinctly labelled. The regulation has been restructured to clarify the elements of the regulation and reworded using simpler language. Subregulation 57(1) requires a methylator to label each container of methylated spirits. A penalty of 1 penalty unit has been inserted at the foot of the subregulation. Subregulation 57(2) requires containers to be sold with the appropriate label. A penalty of 1 penalty unit has been inserted at the foot of the subregulation. Subregulation 57(3) requires that a label not be removed or altered on a container of methylated spirits. A penalty of 1 penalty unit has been inserted at the foot of the subregulation. Subregulation 57(4) has been inserted to provide that Subregulations 57(1), (2) and (3) are offences of strict liability and ensures that they continue to be so.

Regulation 58

Regulation 58 deals with methylating substances to be approved. The regulation has been restructured to clarify the elements of the regulation and reworded using simpler language. Subregulation 58(1) requires a person to have the approval of the Collector to use methylating substance to make methylated spirits. A penalty of 1 penalty unit has been inserted at the foot of the subregulation. Subregulation 58(2) has been inserted to provide that Subregulation 58(1) is an offence of strict liability and ensures that it continues to be so.

Regulation 59

Regulation 59 deals with samples being taken for analysis. The regulation has been restructured to clarify the elements of the regulation and reworded using simpler language. Subregulation 59(1) requires a methylator to take samples of methylated spirits and submit them for analysis. A penalty of 1 penalty unit has been inserted at the foot of the subregulation. Subregulation 59(2) has been inserted to provide that Subregulation 59(1) is an offence of strict liability and ensures that it continues to be so.

Regulation 63

Regulation 63 has been omitted. Regulation 63 was a global offence provision that provided that any person guilty of a breach of the regulations would be punishable on conviction of a penalty of 1 penalty unit. Under the harmonisation of the Criminal Code, the offences should be clear of their face and the penalty should appear at the foot of each offence. As the offence provisions have been amended by these amendments to include the penalty at the foot of the regulations, and, where relevant, state that they are strict liability offences or have defences etc, the global offence provision is superfluous and can therefore be repealed.