

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 174

Issued by authority of the Minister for Revenue and Assistant Treasurer

Excise Act 1901

Excise Amendment Regulations 2006 (No. 3)

Section 164 of the *Excise Act 1901* (the Act) provides, in part, that the Governor-General may make regulations prescribing all matters which by the Act are required or permitted to be prescribed, or as may be necessary or convenient to be prescribed for giving effect to the Act or for the conduct of any business relating to the excise.

The amending Regulations amended the *Excise Regulations 1925* (the Principal Regulations) to:

- omit provisions within the Principal Regulations which were no longer required because they were redundant, sufficiently covered by other legislation or no longer actively enforced. These provisions were inconsistent with the Government's objective of best practice regulation.
- allow tobacco leaf to be delivered, with the Commissioner of Taxation's approval, for destruction or a medical, scientific, horticultural, agricultural or any other purpose. These provisions replaced provisions in Division 5 of the Principal Regulations dealing with tobacco leaf which were overly prescriptive and inconsistent with best practice regulation.
- prescribe remission circumstances for the purposes of section 78 of Act. These remission circumstances continued effective excise-free treatment previously provided by certain items and subitems in the Schedule to the *Excise Tariff Act 1921* (excise tariff), where goods were to be used by certain parties, which were omitted from 1 July 2006 by the *Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Act 2006*.
- make consequential amendments as a result of legislative amendments made by the *Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Act 2006* and the *Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006* which took effect from 1 July 2006. These changes were necessary to ensure the continued effective operation of the excise system.

Details of the amending Regulations are set out in the Attachment.

The amending Regulations formed part of a response to a review of the Schedule to the *Excise Tariff Act 1921* (the excise tariff), which specifies the excise duty applicable to goods, and related legislation. The purpose of the review was to implement certain elements of the Government's fuel tax reforms and simplify and clarify legislative provisions in order to reduce compliance costs for excise manufacturers, importers of excise equivalent goods and administering authorities.

The amending Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The amending Regulations reflect the outcomes of the review of the excise tariff. Industry has been consulted extensively as part of this process, which included consultation on certain substantive aspects of policy reflected in the amending Regulations. Given this, no separate consultation on the amending Regulations was considered necessary.

The amending Regulations commenced on 1 July 2006.

ATTACHMENT

Details of the *Excise Amendment Regulations 2006 (No. 3)*

Regulation 1 — Name of Regulations

Regulation 1 provides that the Regulations are the *Excise Amendment Regulations 2006 (No. 3)*.

Regulation 2 — Commencement

Regulation 2 provides that the Regulations commence on 1 July 2006.

Regulation 3

Regulation 3 provides that Schedule 1 amends the *Excise Regulations 1925* (the Principal Regulations).

Schedule 1 — Amendments

Item 1

Item 1 omitted the definition of ‘other excisable beverage’ from subregulation 2(1). This definition was no longer required as references to this term only occurred in provisions which were also omitted by the amending Regulations.

Item 2

Item 2 omitted former subregulation 2(2), which provided that a reference to a form was to be read as a reference to a form in Schedule 1 to the Principal Regulations. This subregulation was no longer required as former Schedule 1 and all references to forms were omitted by the amending Regulations.

Items 3 and 4

Former Division 5 prescribed requirements for the delivery of tobacco leaf or Australian tobacco for agricultural or horticultural purposes and for the destruction of tobacco leaf. Many regulations in former Division 5 were overly prescriptive and inconsistent with best practice regulation and were therefore substituted (by item 4) or omitted (by item 18).

Item 3 substituted the former heading of Division 5 with ‘Delivery of Australian tobacco leaf’ to reflect the changes to its content.

Item 4 substituted regulation 33. Subregulation 33(1) allows Australian tobacco leaf to be delivered with the Commissioner of Taxation’s approval for a medical, scientific, horticultural, agricultural or any other purpose. This subregulation provides for treatment for tobacco leaf similar to the remission for manufactured tobacco (see item 17), which is more flexible and consistent with modern administration and business practice than the prescriptions contained in former Division 5.

Subregulation 33(2) allows Australian tobacco leaf to be delivered with the Commissioner of Taxation’s approval for destruction. This subregulation has a similar effect to former regulation 39A and continues to allow destruction of tobacco leaf, without specifying the methods of destruction that must be used. This is also more flexible and consistent with modern administration and business practice.

Items 5 and 6

Former subparagraph 50(1)(tc)(i) and paragraph 50(1)(u) referred to goods, as prescribed by by-laws, referred to in subitem 13(A) of the excise tariff. From 1 July 2006, subitem 13(A) of the excise tariff was omitted and as a consequence, an equivalent remission circumstance was included in the amending Regulations which also incorporated the requirements in former Excise By-Law No. 111 (see item 17). Items 5 and 6 omitted these references to subitem 13(A) and by-laws and replaced these with references to the remission circumstance in item 4 of Schedule 1.

Items 7 and 8

Former paragraph 50(1)(ua) and subparagraph 50(1)(ub)(i) referred to goods, as prescribed by by-laws, referred to in subitem 13(B) of the excise tariff. From 1 July 2006, subitem 13(B) of the excise tariff was omitted and as a consequence an equivalent remission circumstance was included in the regulations which also incorporated the requirements in former Excise By-Law No. 112 (see item 17). Items 7 and 8 omitted the references to subitem 13(B) and by-laws and replaced these with references to the remission circumstance in item 5 of Schedule 1.

Items 9 and 10

Former subparagraphs 50(1)(zz)(i) and 50(1)(zza)(i) referred to products that were classified to subitem 15(B) of the excise tariff. From 1 July 2006, former subitem 15(B) was replaced by subitem 15.2. Items 9 and 10 omitted the references to former subitem 15(B) and replaced these with references to subitem 15.2.

Item 11

Paragraph 50(1)(v) allows a refund of excise duty that has been paid on petrol which is, in whole or part, returned to a manufacturer or a warehouse. Former subregulation 50(6) defined 'petrol' for the purposes of paragraph 50(1)(v) as having the same meaning as in former regulation 161. Former regulation 161 was contained in Part IX which was omitted (see item 18).

Item 11 substituted subregulation 50(6), which defines 'petrol' for paragraph 50(1)(v), with goods described in item 10 or 15 of the excise tariff, other than products that have been used. The subregulation simplifies the range of products on which a refund of excise duty is available under paragraph 50(1)(v). However, there is also a condition that a refund of excise duty is not available on products which have been used. This is a revenue protection measure to ensure that goods which have been used and still exist (for example, where they are used other than as a fuel) are subject to excise duty rather than being effectively excise-free through provision of a refund on the used product.

Item 12

Section 78 of the Act allows remissions, rebates and refunds in respect of excisable goods generally or in respect of the goods included in a class of excisable goods in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed.

Item 12 inserted regulation 50A which specifies that for section 78 of the Act, and in addition to regulation 50, the circumstances mentioned in Schedule 1 are prescribed. The purpose of this regulation is to allow new remission circumstances to be presented in table format within Schedule 1 (see item 17), rather than by inserting new paragraphs within regulation 50. This means that specific remission circumstances could be referred to by item numbers rather than by more complicated paragraph references.

Item 13

Former regulation 56 specified conditions for eligibility of a refund under paragraph 50(1)(k) where beer is destroyed or returned to the brewery at which it was made. One condition was that the relevant quantity of beer subject to the refund was not less than 87.5 per cent of the volume of the bulk container as determined under section 77B of the Act at the time it was entered for home consumption. Section 77B of the Act was repealed from 1 July 2006. From 1 July 2006, under section 65 of the Act, the Commissioner of Taxation may, by legislative instrument, determine rules for working out the volume of beer.

Item 13 removed the requirement that the volume of the beer be determined under section 77B of the Act at the time it was entered for home consumption.

Item 14

Former subregulation 57AA(5), which specified certain eligibility requirements for a refund of excise duty under paragraph 50(1)(v), defined 'petrol' to have the same meaning as regulation 161. Former regulation 161 was contained in Part IX which was omitted (see item 18), and 'petrol' for the purposes of paragraph 50(1)(v) is defined in paragraph 50(6) (see item 11).

Item 14 omitted the reference to regulation 161 and replaced it with a reference to subregulation 50(6).

Items 15 and 16

Former paragraphs 186(1)(a) and 186(1)(e) included references to ship's stores that are 'spiritous liquor or beverages (other than beer or wine)' and specified when they are liable to excise duty. Items 15 and 16 omitted these references and replaced them with references to 'alcoholic beverages (other than beer)'. The intention was not to broaden the range of products referred to but rather to update these paragraphs to use more modern language and reflect the fact that wine does not need to be expressly excluded as it is no longer an excisable good.

Item 17

Former Schedule 1 prescribed forms for the purposes of regulations which were omitted by the amending Regulations. This Schedule was therefore no longer required.

Item 17 substituted Schedule 1 so that it prescribes refund, rebate and remission circumstances for the purposes of section 78 of Act, in accordance with regulation 50A (see item 12).

The purpose of the prescribed remission circumstances in Schedule 1 is to continue effective excise-free treatment to replace certain items and subitems in the excise tariff which provided a free rate of duty where they were to be used by certain parties. These free items and subitems were omitted from 1 July 2006 to promote the excise tariff being concerned, as far as possible, with the classification of goods with a view to taxing them rather than providing concessions.

The circumstances for remission of excise duty in Schedule 1 are as follows:

- excise duty is payable on tobacco that is to be used, other than by human consumption and where the Commissioner of Taxation's approval has been obtained, for a medical, scientific, horticultural, agricultural purpose or any other purpose. This replaced former subitem 9(A) of the excise tariff and also former regulations 33, 34, 35 and 36 which allowed the delivery of Australian tobacco for agricultural or horticultural purposes. However, the remission is broad enough to accommodate any purpose for which the Commissioner of Taxation's approval has been obtained provided that the tobacco is not consumed by humans.
- excise duty is payable on goods for the official use of the Governor-General, any member of the Governor-General's family, a State Governor or any member of a State Governor's family. This replaced former subitems 10(B) and 10(C) of the excise tariff.
- excise duty is payable on certain goods that are for the official use of an international organisation established by agreement between Australia and one or more other countries or for the official or personal use of an official of an international organisation of that kind, and not for the purposes of trade. The goods must either be the property of the Australian American Foundation or petroleum products that are the property of the ANZAC Agency for the Pacific Region of the Commonwealth War Graves Commission. This replaced former subitem 10(F) of the excise tariff, and also incorporated the requirements applicable to this subitem contained in former Excise By-Law No. 92 into the remission circumstance.
- excise duty is payable on goods that are for the official use (and not for the purposes of trade) by the Government of a country other than Australia under an agreement between that Government and the Government of Australia. This replaced former subitem 13(A) of the excise tariff, and also incorporated the requirements applicable to this subitem contained in former Excise By-Law No. 111 into the remission circumstance.
- excise duty is payable on goods for use by, or sale to, persons covered by a Status of Forces agreement between the Government of Australia and another country if the goods are for the official use of a person covered by the agreement and are not resold in Australia to a person not covered by the agreement. This replaced former subitem 13(B) of the excise tariff, and also incorporated the requirements applicable to this subitem contained in former Excise By-Law No. 112 into the remission circumstance.
- excise duty is payable on ale, porter and other beer, brandy, whisky, rum, gin, liqueurs, tobacco, cigars, cigarettes for consumption by the personnel of a sea-going vessel of the Royal Australian Navy or Australian Military Forces when the vessel is in full commission and the goods are consumed on the vessel. This replaced former item 18 of the excise tariff.

- excise duty is payable on goods purchased by a relevant traveller at an inwards duty free shop, being goods that, if they had been imported into Australia, and the clearance through Customs of the personal baggage (including the excisable goods) of the relevant traveller had been approval of their delivery for home consumption for the purposes of the Customs Act 1901, would have been goods described in paragraph (b) of item 15 of Schedule 4 to the Customs Tariff Act 1995, to which that item applied. This replaced former item 21 of the excise tariff, but uses wording which more accurately reflects the intended effect of the provision. The purpose of this provision is to provide a remission for excisable goods purchased from an inwards duty free shop where total duty free purchases (customs and excise) do not exceed in total the duty free allowances.

Unlike the other circumstances for rebates, refunds and remissions prescribed by regulation 50, the remission circumstances in Schedule 1 do not require an application. This ensures that similar treatment is provided to parties as is provided through the former free items and subitems in the excise tariff.

Item 18

Item 18 omitted the following provisions which were no longer required:

- regulation 2A: prescribed cases and conditions for the purposes of section 24 of the Act as those listed in Schedule 2. Section 24 of the Act allowed excisable goods or goods liable to duties of Customs, or both excisable goods or goods liable to duties of Customs, to be used in the manufacture of excisable goods in the prescribed cases and subject to the prescribed conditions. From 1 July 2006, section 24 was amended so that prescriptions on the use of excisable goods or goods liable to duties of Customs in the manufacture of excisable goods are optional rather than mandatory. The cases and conditions in Schedule 2, which were also omitted by item 18, were overly prescriptive and inconsistent with modern policy and business practice, and therefore this regulation was omitted.
- paragraph 50(1)(e): provided a circumstance for a refund of excise duty where it has been paid on spirit for fortifying Australian wine or Australian grape must. As fortifying spirit has had a free rate of duty since 1970, this refund circumstance was no longer required.
- paragraph 50(1)(f): provided a circumstance for a remission of excise duty where it is payable on spirit for fortifying Australian wine or Australian grape must. As fortifying spirit has had a free rate of duty since 1970, this remission circumstance was no longer required.
- paragraph 50(1)(zx): provided a circumstance for a remission of excise duty on recycled products (other than diesel fuel or gasoline) which were demonstrated to be for the purpose for which they were used before they were recycled. From 1 July 2006, section 77J of the Act excludes certain goods subject to a recycling process from excise. This paragraph was no longer required as goods covered by the remission are excise-free.
- paragraph 50(1)(zy): provided a circumstance for a refund of excise duty on recycled products (other than diesel fuel or gasoline) which were used for the purpose for which they were used before they were recycled. From 1 July 2006, section 77J of the Act excludes certain goods subject to a recycling process from excise. This paragraph was no longer required as goods covered by the refund are excise-free.

- regulations 34 to 39A (inclusive): prescribed requirements for the delivery of tobacco leaf or Australian tobacco for making sheep dip or for any agricultural or horticultural purpose and the destruction of tobacco leaf. These regulations were overly prescriptive and inconsistent with best practice regulation. Regulations under items 4 and 17 accommodate these and other activities.
- regulation 52AAAA: made prescriptions for the purpose of section 78AAAA of the Act, which provided for payments to certain naphtha producers up until 31 December 2005. Section 78AAAA of the Act was repealed from 1 July 2006. Although this regulation technically allowed for applications to be made up until 31 December 2006, it was not expected that any applications would be made over this period and they continue to be permitted by virtue of the *Acts Interpretation Act 1901*.
- regulation 54: specified that certain remissions and refunds were not allowed unless goods were destroyed under the supervision of an officer and required payment for this supervision in accordance with regulation 209A. This regulation was no longer required. As the relevant remissions and refunds are subject to an application process, the Collector may require supervision of destruction to be satisfied that the circumstance exists.
- regulation 80: relied on subsection 58E(1) of the Act which never became operative. This regulation was therefore inoperative and not required.
- subregulation 186(4): prescribed a form for the purposes of subsection 160A(4) regarding returns of ship's stores. This regulation was overly prescriptive and unnecessary as the subsection refers to a 'form made available by the Collector'.
- regulation 244: prescribed certain excisable goods for the purpose of section 57 of the Act. From 1 July 2006, section 57 was repealed. This regulation was therefore inoperative and no longer required.
- regulation 245: prevented persons other than licensed manufacturers from assuming or using words or marks (including factory numbers) that would lead other persons to believe that they were licensed manufacturers. Given that marking and labelling requirements were also omitted by item 18 of the proposed Regulations, this regulation would have had a very limited application and was no longer required.
- regulation 246: specified that an application fee for paragraph 39(2)(f) of the Act was nil. As the paragraph refers to an 'application fee (if any)' the regulation was not necessary.
- regulations 249 and 250: prescribed the fuel marker and the threshold proportion of the fuel marker for the purposes of paragraph 5D(b) of the *Excise Tariff Act 1921*. From 1 July 2006, all references to the marker were removed from the excise tariff and section 5D of the *Excise Tariff Act 1921* was repealed. These regulations were no longer required from 1 July 2006.
- Part II, Division 1: specified certain requirements for tobacco producers and dealers which were adequately addressed by the Act. This Division was therefore no longer required.

- Part II, Division 2: specified drawings and particulars to accompany applications and amounts to be given in security by an applicant to manufacture tobacco, cigars, cigarettes and snuff. These requirements did not need to be prescribed as section 39 of the Act allows drawings and particulars to be requested in relation to licence applications and section 16 of the Act provides sufficient power for an appropriate amount of security, if any, to be nominated by the Commissioner of Taxation.
- Part II, Division 4: prescribed destruction methods for waste tobacco. From 1 July 2006, section 75 of the Act does not require the destruction methods for waste tobacco to be prescribed but removal of waste tobacco from a factory for destruction remains subject to authorisation. This Division was overly prescriptive and inconsistent with best practice regulation and was not required.
- Part II, Divisions 6-8: prescribed requirements for packaging and marking of packages of tobacco products. Compliance with these requirements was no longer actively enforced and these regulations were not required as they were overly prescriptive and inconsistent with best practice regulation.
- Parts VI and VIII: prescribed requirements relating to spirits for fortifying Australian wine and Australian grape must and for industrial or scientific purposes or educational institutions. From 1 July 2006, changes to the Act and *Excise Tariff Act 1921* provide sufficient flexibility to deliver the concessional spirits scheme without requiring prescriptions in the regulations.
- Part IX: prescribed the following:
 - a definition of ‘petrol’. This was no longer required as this term only appeared in Part III concerning remissions, refunds and rebates and a definition is provided in subregulation 50(6) (see item 11).
 - drawings and particulars to accompany licence applications to manufacture petrol. These requirements did not need to be prescribed as section 39 of the Act provides adequate power to address this.
 - that an amount in security may be required to be given by an applicant for a licence to manufacture petrol. This was not required as section 16 has the same effect.
 - requirements regarding the security and storage of goods at factories for the manufacture of petrol. The conditioning of licences can impose these requirements should they be necessary.
 - requirements regarding the packaging and marking of containers of petrol for removal from a factory. Compliance with these requirements was no longer actively enforced and they were overly prescriptive and inconsistent with best practice regulation.
 - that an officer may take samples of material in a factory and requires payment of duty on any deficiencies of petrol. There are sufficient powers in sections 60, 62 and 106 of the Act to accommodate this.
- Part 10: relates to section 77G and 77J of the Act, which were repealed from 1 July 2006, making this part inoperative.

- Part XIII: prescribed the following:
 - requirements for brewers, distillers and manufacturers to furnish returns of excisable goods. The conditioning of licences and section 50 of the Act can impose these requirements should they be necessary and these requirements were not required.
 - requirements for brewers, distillers and manufacturers and persons in charge of any factory where excisable goods are manufactured to answer questions that the Collector or an officer asks, to the best of their knowledge, information or belief. The source of power for this regulation under the Act was uncertain and it was a coercive requirement which was no longer required in the modern context.
 - requirements regarding declarations which are required in regulations and forms in Schedule 1. As the relevant regulations and Schedule 1 were omitted by the amending Regulations, these requirements were no longer required.
- Part XVI: prescribed the following:
 - certain procedural requirements, including documents to accompany excisable goods subject to the control of Customs and the requirement that goods subject to the Commissioner of Taxation's control were only loaded or discharged from a coasting ship in certain ports. These requirements were no longer actively enforced and they were overly prescriptive and inconsistent with best practice regulation.
 - that an officer was entitled, at any reasonable time, to have access to premises where spirit was stored or used and to inspect, examine or take extracts from a book, record or document kept in relation to any such spirit. From 1 July 2006, section 77FH of the Act requires a person to account for spirit classified to subitems 3.5, 3.6 and 3.7 of the excise tariff, making this regulation unnecessary.
 - that the Collector may require additional copies of prescribed forms, or accept any documents that are substantially in accordance with prescribed forms. These regulations were no longer required as all prescribed forms were omitted by the amending Regulations.
 - working days and working hours, overtime and payment rates for services of officers. These requirements were overly prescriptive and inconsistent with best practice regulation.
- Part XVIII: prescribed requirements for labelling of beer and amounts to be given in security by an applicant for a licence to manufacture beer. Compliance with the labelling requirements was no longer actively enforced and section 16 of the Act provides sufficient power for an appropriate amount of security, if any, to be nominated by the Commissioner of Taxation. This Part was not required as it was overly prescriptive and inconsistent with best practice regulation.
- Part XX: prescribed the following:
 - drawings and particulars to accompany licence applications to manufacture liqueurs and other excisable beverages. These requirements did not need to be prescribed as section 39 of the Act provides adequate power to address this.

- that whole or part of a premises licensed as a distillery under the *Distillation Act 1901* or as a warehouse under the *Customs Act 1901* can be licensed for manufacture of other excisable beverages. From 1 July 2006, the *Distillation Act 1901* was repealed and a manufacturer of liqueurs or other excisable beverages requires a manufacturer licence under the Act.
- amounts to be given in security by an applicant to manufacture tobacco, liqueurs and other excisable beverages. This prescription was not required as section 16 of the Act provides sufficient power for an appropriate amount of security, if any, to be nominated by the Commissioner of Taxation.
- requirements regarding the security, plant and equipment and the storage of goods at licensed factories for the manufacture of liqueurs or other excisable beverages. These requirements did not need to be prescribed as the conditioning of licences can impose necessary requirements on licence holders.
- that officers may gauge a tank, vat or other container installed in a factory. Section 86 of the Excise Act provides access to factories by officers to examine and take account of excisable goods which sufficiently covers gauging of containers, making this prescription unnecessary.
- methods for ascertaining the dutiable content and provide that the Collector may make reasonable allowances for waste with respect to liqueurs and other excisable beverages. From 1 July 2006, section 65 of the Act allows for the making of rules which include the percentage by volume of alcohol in excisable goods and may permit variations attributable to the manufacturing process, making these prescriptions unnecessary.
- requirements for the packaging, marking and labelling of liqueurs and other excisable beverages. These requirements were no longer actively enforced and were overly prescriptive and inconsistent with best practice regulation.
- Schedule 2: prescribed cases and conditions for the purposes of regulation 2A. As regulation 2A was also omitted by item 18, this Schedule was no longer required.