

EXPLANATORY STATEMENT
Select Legislative Instrument 2012 No. 190

Issued by authority of the Assistant Treasurer

Excise Act 1901

Excise Amendment Regulation 2012 (No. 3)

Section 164 of the *Excise Act 1901* (the Act) provides that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which are required by the Act 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 excise.

Section 78 of the Act provides that regulations may be made for the purposes of prescribing the circumstances of remissions, rebates and refunds of excise duty.

The *Excise Amendment Regulation 2012 (No. 3)* (the Regulation) implements the Government's 2012-13 Budget announcement to extend the microbreweries excise refund scheme established by the *Excise Regulations 1925*.

Previously, a microbrewery was entitled to a refund of 60 per cent of excise paid, up to a maximum of \$10,000 per financial year. Among other eligibility rules, a microbrewery was defined as a brewery with a total production of beer not exceeding 30,000 litres per financial year.

The Regulation expands the excise refund scheme by increasing the maximum refund amount from \$10,000 to \$30,000 and by removing the total production cap of 30,000 litres of beer. Therefore a refund may be provided of 60 per cent of excise duty paid by an eligible brewery, up to a maximum amount of \$30,000 per financial year.

The term 'eligible brewery' will replace references to a 'microbrewery', as the refund will be available to breweries regardless of production volumes.

The Regulation clarifies that the maximum refund amount applies to an entity that operates a brewery (rather than to each brewery). Therefore where an entity operates more than one brewery, it may only be paid a maximum refund of \$30,000.

The Regulation also clarifies that the requirement for legal and economic independence applies to an entity that operates a brewery. For the purposes of the Regulation, an entity that operates a brewery that is a subsidiary (within the meaning of the Corporations Law) of another entity that operates a brewery, is not legally independent, and therefore the brewery cannot be an eligible brewery. Additionally an entity that operates a brewery cannot be economically independent if its operations are subsidised by another entity that operates a brewery.

The Regulation applies retrospectively to beer manufactured on and from 1 July 2012.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Time constraints meant that no consultation was undertaken on the excise refund scheme Regulation changes. However, the Government's decision to extend the excise refund scheme was in response to industry calls for support for small breweries to be increased.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Excise Amendment Regulation 2012 (No. 3)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the Legislative Instrument is to extend the current microbreweries excise refund scheme from 1 July 2012.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.