



# **Excise and Other Legislation Amendment (Compliance Measures) Act 2004**

**No. 91, 2004**

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

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
4	Application of amendments.....	3
<b>Schedule 1—Delivery of goods for export</b>		<b>4</b>
	<i>Customs Act 1901</i>	4
	<i>Excise Act 1901</i>	5
<b>Schedule 2—Movement of tobacco seed, plant and leaf</b>		<b>7</b>
	<i>Excise Act 1901</i>	7
<b>Schedule 3—Immediate disposal of seized goods</b>		<b>10</b>
	<i>Excise Act 1901</i>	10
<b>Schedule 4—Providing licensing information</b>		<b>14</b>
	<i>Excise Act 1901</i>	14





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**An Act to amend the *Excise Act 1901*, and for other  
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[Assented to 29 June 2004]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Excise and Other Legislation  
Amendment (Compliance Measures) Act 2004*.

## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	29 June 2004
2. Schedule 1, item 1	At the same time as the provision(s) covered by table item 4.  However, this provision does not commence at all if item 62 in Part 3 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> commences before, or at the same time as, the provision(s) covered by table item 4.	
3. Schedule 1, items 2 and 3	The later of: (a) the time when the provision(s) covered by table item 4 commence; and (b) immediately after the commencement of item 62 in Part 3 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> .	
4. Schedule 1, items 4 to 9	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.	
5. Schedules 2, 3 and 4	The day after this Act receives the Royal Assent.	30 June 2004

Note: This table relates only to the provisions of this Act as originally passed by 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.

### **4 Application of amendments**

The amendments made by Schedule 3 to this Act apply in relation to goods seized on or after the commencement of that Schedule.

## Schedule 1—Delivery of goods for export

### *Customs Act 1901*

#### **1 Subsection 114D(2)**

Repeal the subsection, substitute:

(2) If:

- (a) excisable goods on which excise duty has not been paid have been delivered to a place prescribed for the purposes of paragraph 30(1)(d) of this Act; and
- (b) the export entry that applies to those goods is withdrawn, or withdrawn insofar as it applies to those goods;

then, despite any implication to the contrary in subsection (1), the goods become, on communication to Customs of the withdrawal, goods under the Commissioner's control under section 61 of the *Excise Act 1901*.

Note: If item 62 in Part 3 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* commences before items 4 to 9 of this Schedule commence, this item does not commence at all. See item 2 of the table in subsection 2(1).

#### **2 Subsection 114D(3)**

Repeal the subsection, substitute:

(2) If:

- (a) excisable goods on which excise duty has not been paid have been delivered to a place prescribed for the purposes of paragraph 30(1)(d); and
- (b) the export entry that applies to those goods is withdrawn, or withdrawn insofar as it applies to those goods;

then, despite any implication to the contrary in subsection (1), the goods become, on communication to Customs of the withdrawal, goods under the Commissioner's control under section 61 of the *Excise Act 1901*.

### **3 Subsection 114D(4)**

Renumber as subsection (3).

## ***Excise Act 1901***

### **4 Section 16 (note)**

Omit “section: see also section 61AB of this Act”, substitute “section”.

### **5 After subsection 60(1B)**

Insert:

- (1C) If a person (including a licensed manufacturer) has, or has been entrusted with, the possession, custody or control of excisable goods:
- (a) on which duty has not been paid; and
  - (b) that have been delivered for exportation in accordance with a permission under section 61A; and
  - (c) the person:
    - (i) fails to keep those goods safely; or
    - (ii) when requested by a Collector, does not satisfy the Collector that the goods have been exported and does not otherwise account for those goods to the satisfaction of the Collector;
- the person must, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the excise duty which would have been payable on those goods if they had been entered for home consumption on the day on which the Collector made the demand.
- (1D) For the purposes of subparagraph (1C)(c)(ii), evidence that the goods were delivered for export does not constitute evidence that goods have been exported.

### **6 Subsection 60(2)**

Omit “or (1B)”, substitute “, (1B) or (1C)”.

### **7 Section 61AB**

Repeal the section.

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**8 After subsection 61A(2)**

Insert:

(2A) A Collector may give permission in writing to a person specified in the permission to deliver for exportation goods of a kind specified in the permission that are subject to the CEO's control and, until the permission is revoked, the permission is authority for the person to deliver for exportation goods of that kind that are subject to the CEO's control accordingly.

(2B) A Collector may give permission in writing to a person specified in the permission to deliver for exportation goods subject to the CEO's control that are specified in the permission, and the permission is authority for the person to deliver those goods accordingly.

**9 Subsection 61A(3)**

Omit "or (2)", substitute ", (2), (2A) or (2B)".

## Schedule 2—Movement of tobacco seed, plant and leaf

### *Excise Act 1901*

#### **1 Subsection 44(1)**

After “to move”, insert “tobacco seed, tobacco plant or”.

Note: The heading to section 44 is altered by inserting “**tobacco seed, tobacco plant and**” after “to move”.

#### **2 Subsection 44(2)**

Omit “the permission”, substitute “a permission to move tobacco leaf”.

#### **3 Subsection 44(4) (penalty)**

Repeal the penalty, substitute:

Penalty:

- (a) if the permission relates to tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
- (b) if the permission relates to 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.

#### **4 At the end of section 44**

Add:

- (7) If, before the tobacco seed, tobacco plant or tobacco leaf was moved, 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)(ba), the movement of the seed, plant or leaf is taken to have been moved without permission under section 44.

- (8) A person commits an offence if:
- (a) the person has permission under this section to deliver tobacco seed, tobacco plant or tobacco leaf for export; and
  - (b) the seed, plant or leaf is not exported within 30 days after the day of delivery (or, if the permission specifies a shorter or longer period, that shorter or longer period); and
  - (c) the person fails to return the seed, plant or leaf to the place specified in a permission for the return of the goods within 5 days after the end of the 30 day period (or, if the permission mentioned in paragraph (a) specified a shorter or longer period, after the end of that shorter or longer period).

Penalty:

- (a) if the permission relates to tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
  - (b) if the permission relates to 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.
- (9) Subsection (8) does not apply if the goods were destroyed before the end of the 30 day period (or if the permission specified a shorter or longer period, that shorter or longer period).

Note: The defendant bears an evidential burden in relation to the matters in subsection (9). See subsection 13.3(3) of the *Criminal Code*.

## **5 Paragraph 116(1)(ba)**

After “all”, insert “tobacco seed, tobacco plant or”.

## **6 Subsection 117D(1)**

After “material that is”, insert “tobacco seed, tobacco plant or”.

**7 Subsection 117D(1)**

After “the material is”, insert “tobacco seed, tobacco plant or”.

**8 Subsection 117D(1) (penalty)**

Repeal the penalty, substitute:

Penalty:

- (a) if the material is tobacco seed or tobacco plant—2 years imprisonment or 500 penalty units; and
- (b) if the material is tobacco leaf—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.

**9 Subsection 117D(2)**

After “move”, insert “tobacco seed, tobacco plant or”.

## Schedule 3—Immediate disposal of seized goods

### *Excise Act 1901*

#### **1 Subsection 107FJ(1)**

Repeal the subsection, substitute:

- (1) The CEO may cause goods to be dealt with in such manner as the CEO considers appropriate (including destruction of the goods) if:
  - (a) the goods are seized under a seizure warrant or section 9 of the *Crimes Act 1914*; and
  - (b) any of the following applies:
    - (i) the goods are perishable goods;
    - (ii) the CEO is satisfied that the goods do not meet a standard that applies to goods of that kind;
    - (iii) the CEO is satisfied that there is a reasonable likelihood that the goods, if made available to the public, would constitute a risk to public health or public safety.

#### **2 Paragraph 107FJ(6)(c)**

Repeal the paragraph, substitute:

- (c) the owner of the goods establishes to the satisfaction of the Court that, at the time the goods were dealt with:
  - (i) if the goods were dealt with on the ground mentioned in subparagraph (1)(b)(i)—the goods were not perishable goods; or
  - (ii) if the goods were dealt with on the ground mentioned in subparagraph (1)(b)(ii)—the goods met the standards that applied to goods of that kind; or
  - (iii) if the goods were dealt with on the ground mentioned in subparagraph (1)(b)(iii)—there was no reasonable likelihood that the goods, if made available to the public, would constitute a risk to public health or public safety.

### **3 At the end of section 107FJ**

Add:

- (8) For the purposes of subsections (1) and (6), a reference to perishable goods is taken to include a reference to goods that will perish unless:
  - (a) treated with chemicals to preserve them (for example, goods such as tobacco); or
  - (b) stored in special conditions (for example, conditions such as refrigeration).

### **4 At the end of Division 1A of Part IX**

Add:

#### **107GB Retaining evidential material of goods immediately disposed of**

- (1) If goods are dealt with under section 107FJ, the CEO must ensure that, before the goods are so dealt with:
  - (a) a sample of the goods is taken in accordance with subsection (2); and
  - (b) a written record of the goods is made.
- (2) An officer taking a sample of goods for the purposes of subsection (1) must, in the presence of another officer:
  - (a) divide the sample into 3 equal parts; and
  - (b) mark and securely seal each part; and
  - (c) retain one part for examination by an analyst appointed under section 107GC; and
  - (d) retain one part for further examination, if necessary; and
  - (e) retain one part for delivery for further examination by a person nominated under subsection (4), in the event that the owner of the goods requests further examination.
- (3) A sample taken (other than of perishable goods) or a record made under subsection (1) must be retained until the later of:
  - (a) the end of the period of 3 years from the day the sample is taken or the record made; or

- (b) if proceedings are commenced in relation to those goods—the proceedings are completed.
- (4) If an owner of goods dealt with under section 107FJ requests further examination of a sample of the goods, that further examination is to be performed by a person nominated by the owner who is, in the CEO's opinion, suitably qualified for the task.

### **107GC Appointment of analyst**

The CEO may, by written instrument, appoint an officer or other suitably qualified person to be an analyst for the purposes of this Act.

### **107GD Evidentiary certificates in relation to goods immediately disposed of**

*Goods for which evidentiary certificates may be provided*

- (1) This section applies to proceedings in respect of goods that have been dealt with under section 107FJ.

*Evidentiary certificate signed by officer*

- (2) An officer may sign a certificate stating any of the following:
  - (a) that a person had, or did not have, a licence, permission or authority under this Act at a particular time;
  - (b) if a person had a licence, permission or authority under this Act—the details of that licence, permission or authority;
  - (c) that particular premises were, or were not, the subject of a licence, permission or authority under this Act at a particular time.

*Analyst's certificate*

- (3) An analyst appointed under section 107GC may sign a certificate stating in respect of a sample of the goods taken under section 107GB:
  - (a) that the analyst was appointed under section 107GC; and
  - (b) when and from whom the sample was received; and

- (c) what, if any, labels or other means of identifying the sample accompanied it when it was received; and
- (d) what container or containers the sample was in when it was received; and
- (e) a description of the sample received; and
- (f) when the sample, or a portion of it, was analysed; and
- (g) a description of the method of analysis; and
- (h) the results of the analysis.

*Certificate is prima facie evidence of the matters stated*

- (4) A certificate is admissible as prima facie evidence of the matters stated in the certificate and, unless the contrary is proven, a document purporting to be such a certificate must be taken to be such a certificate.

*Copy of certificate must be given to defendant*

- (5) Despite subsection (4), a certificate must not be admitted in evidence in proceedings for an offence in relation to the goods unless the person charged with the offence, or a legal practitioner who has appeared for the person in those proceedings, has been given a copy of the certificate at least 14 days before the certificate is sought to be admitted.

*Person giving certificate may be called to give evidence*

- (6) Subject to subsection (7), if a certificate is admitted in evidence in proceedings for an offence, the person charged with the offence may require the person who signed the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.
  - (7) Subsection (6) does not entitle the person charged to require the person who signed the certificate to be called as a witness for the prosecution unless:
    - (a) in the case of a certificate under subsection (3), the prosecutor has been given at least 4 days' notice of the person's intention to require the analyst to be called; or
    - (b) the court, by order, allows the person charged to require the person giving the certificate to be called.
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## Schedule 4—Providing licensing information

### *Excise Act 1901*

#### **1 At the end of subsection 159(2)**

Add “or (3A)”.

#### **2 After subsection 159(3)**

Insert:

(3A) It is not an offence against subsection (2) if:

- (a) the entrusted person is the Commissioner or a Deputy Commissioner or a person authorised by the Commissioner or a Deputy Commissioner to disclose the information; and
- (b) the information disclosed is about:
  - (i) whether a person (the *first person*) holds a licence under this Act, the details of a licence held by the first person under this Act or any conditions that apply to such a licence; or
  - (ii) whether a person (the *first person*) has a permission under this Act to move goods, the details of a permission that the first person has under this Act or any conditions that apply to such a permission; or
  - (iii) whether, under section 78 of this Act, a person (the *first person*) is allowed a remission of excise duty in relation to a class of goods, details of a remission of duty that the first person is allowed under this Act or any conditions that apply to such a remission; and
- (c) the disclosure is made to a person (the *second person*) who is dealing with, or is proposing to deal with, the first person in relation to goods that are, or that could be, covered by a licence or permission, or goods in respect of which a remission of duty is allowed, or may be allowed, under this Act; and
- (d) the entrusted person has formed the opinion that the disclosure is necessary for the purpose of ensuring that the

dealing, or proposed dealing, is or will be in accordance with this Act.

- (3B) For the purposes of paragraphs (3A)(b) and (c), a reference to a person is taken to include a reference to an unincorporated association or other body.

### **3 Subsection 159(4)**

Omit “Subsection (3) does”, substitute “Subsections (3) and (3A) do”.

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*[Minister’s second reading speech made in—  
House of Representatives on 25 March 2004  
Senate on 22 June 2004]*

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(33/04)

*Excise and Other Legislation Amendment (Compliance Measures) Act 2004 No. 91, 2004*