

Bills Digest
No. 88 2000–01

Taxation Laws Amendment (Excise
Arrangements) Bill 2000

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Taxation Laws Amendment (Excise Arrangements) Bill
2000

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Taxation Laws Amendment (Excise Arrangements) Bill 2000

Date Introduced: 7 December 2000

House: House of Representatives

Portfolio: Treasury

Commencement: The earlier of 1 July 2001 and 28 days after Royal Assent apart from certain items in Schedules 2-6 whose commencement depends on when parts of the *Administrative Review Tribunal Act 2000* have commenced.

Purpose

To amend excise, customs and taxation legislation to give statutory recognition to the 1998/99 administrative changes that transferred the excise function of the Australian Customs Service to the Australian Taxation Office.

Background

In simple terms customs duties are taxes on importation or exportation of goods, calculated by reference to the value or quantity of those goods. Excise duties are taxes on goods imposed at any stage of production, manufacture or distribution before reaching the final consumer, and may or may not be calculated according to quantity or price.¹

The Australian Customs Service ('Customs') is established under the *Customs Administration Act 1985* as is the position of Chief Executive of Customs.² Customs administers a number of Commonwealth statutes and until 1998 administered the *Excise Act 1901* and other related excise legislation.

On 21 October 1998, a new Administrative Arrangements Order resulted in the transfer of the excise function from Customs to the Australian Taxation Office (ATO).³ Responsibility for the excise function was actually taken over by the ATO with effect from 1 February 1999.⁴ The change involved about 300 people and resulted in the formation of the excise business line within the ATO.⁵ The excise function comprises the collection of excise duty on locally manufactured tobacco, alcohol and petroleum

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products, concessional duty arrangements, underbond movements of excise products and the Diesel Fuel Rebate Scheme and associated compliance activities.⁶

The Minister's Second Reading Speech for this Bill states that the rationale for the change is that:

Excise is an indirect tax, and it is appropriate that the administration of excise laws be integrated with that of other taxation laws.⁷

The Excise Acts consist of the

- *Excise Act 1901*
- *Excise Tariff Act 1921*
- *Distillation Act 1901*
- *Spirits Act 1906*
- *Coal Excise Act 1949* and
- *Fuel (Penalty Surcharges) Administration Act 1997* and associated penalty surcharge imposition Acts.

The Bill amends these Acts together with the *Customs Act 1901*, the *Customs Administration Act 1985* and the *Taxation Administration Act 1953* in order to give legislative effect to the administrative transfer of the excise function from Customs to the ATO.

Main Provisions

Schedules 1 and 2 - Amendment of the *Excise Act 1901*

Schedule 1 - Search and Seizure Powers

Under Part XII of the *Customs Act 1901* 'authorised officers' have extensive powers of investigation and enforcement including action taken in relation to excise. For example, officers are empowered in accordance with a warrant to enter premises, search for and seize forfeited goods or evidential material and if necessary conduct ordinary and frisk searches (sections 199 and 203A). Further, in exercising these powers officers may use such force as is necessary and reasonable in the circumstances (section 103J). These powers relate both to customs and excise matters. Since 1999 ATO officers under delegation from the CEO of Customs have had these investigative powers in relation to excise matters.

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As the Bill moves the administration of excise from Customs to the ATO, **Schedule 1** incorporates into the *Excise Act 1901* search and seizure functions that replicate those in Part XII of the *Customs Act 1901*. The provisions in **Schedule 1** of the Bill appear to be almost identical to those in Part XII. They do not grant any additional powers and significantly the considerable investigative powers specific to narcotics matters found in Part XII of the *Customs Act 1901* are not included in the Bill. As **Schedule 1** is largely a replication of existing provisions in the *Customs Act 1901*, this Digest does not provide detailed analysis of this Schedule.

Schedule 2 - Further Technical Amendments of the *Excise Act 1901*

Schedule 2 of the Bill contains mainly technical amendments to take account of the new arrangements whereby the Australian Taxation Commissioner rather than the CEO of Customs is responsible for the general administration of the *Excise Act 1901*.

Items 1-4, 6-12 and 14-15 amend and repeal definitions in section 4 of the *Excise Act 1901* to reflect these new arrangements. For example the term CEO is redefined to mean the Commissioner of Taxation (Commissioner) not the Chief Executive Officer of Customs (**item 4**). The definition of Officer of Customs is repealed (**item 14**) and the term 'authorised officer' is redefined as an officer authorised by the CEO (ie the Commissioner) to perform the functions of the authorised officer (**item 3**). The Bill removes all references to Customs and where appropriate replaces them with the term CEO (ie Commissioner). An officer is no longer a Customs officer but a person engaged under the *Public Service Act 1999* who is exercising powers or performing functions under a taxation law (**item 12**). A collector will no longer have the same meaning as in the *Customs Act 1901* but will be the CEO (ie the Commissioner) or authorised officer (**item 6**).

Item 18 amends section 7 of the *Excise Act 1901* to clarify that the Commissioner rather than the CEO of Customs has the general administration of the Act. **Item 20** repeals section 13 which states that customs officers and excise officers are interchangeable. Section 83 which empowers the CEO of Customs to give directions concerning the exercise of powers of officers under the *Excise Act 1901* is also repealed (**item 71**).

The definition of 'approved form' in section 4AA as a form approved by the CEO of Customs is to be repealed (**items 1 and 16**). An approved form will be redefined as having the meaning given by section 388-50 in Schedule 1 of the *Taxation Administration Act 1953* (**item 1**). This definition is used in other legislation administered by the Commissioner.

Section 162C of the *Excise Act 1901* deals with review of decisions. **Item 110** repeals and replaces subsection 162C(2) to incorporate the review process currently in place for tax legislation. A person dissatisfied with a Collector's decision relating to an amount of excise to be paid may object according to the method set out in Part IVC of the *Taxation Administration Act* (see also **proposed paragraph 78AE(6)(b)**). This method requires internal review by the Commissioner before the matter can be referred to the Administrative Appeals Tribunal (AAT).

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Items 28-31, 47, 51, 54, 55, 57, 58, 78, 83, 87, 90-92, 94-97, 100, 101 and 118 make technical amendments to replace the monetary penalties for offences with the penalty unit standard specified in the *Crimes Act 1914*. In most cases the penalty unit represents an increase of 10%. For example in paragraph 134(1)(f) of the *Excise Act 1901*, 50 penalty units (currently \$5,500) replaces a penalty of \$5,000. This reflects current drafting practice.

Item 99 repeals and replaces section 133 which defines excise prosecutions. Under new section 133 excise prosecutions are defined as proceedings by the Commissioner for the recovery of penalties under any Excise Act or for the recovery of penalties relating to the diesel fuel rebate provisions under the Customs Act 1901 or for the condemnation of goods seized as forfeited (**new section 133**).

Proposed section 159 deals with breaches of confidence by officers (**item 105**). Section 16 of the *Customs Administration Act 1985* currently deals with this matter but under the new arrangements will have no application to officers dealing with excise. **Proposed subsection 159(2)** provides that a person who is or was an 'authorised person' must not make a record of or disclose 'protected information'. 'Protected information' is defined in **proposed subsection 159(6)** as information about a person obtained in the course of official employment which was disclosed or obtained under an excise law. There are exceptions to this general prohibition - if the record or disclosure is authorised by any law, is done in the course of performing the person's duties or the disclosure is to Customs, to the Australian Bureau of Statistics, to the AAT or to a person performing functions under a taxation law (**proposed subsection 159(3)**). **Proposed subsection 159(4)** clarifies that these exceptions do not allow disclosure of information to a Minister. The penalty for breach is 2 years imprisonment or 500 penalty units.

Proposed subsection 159(2) prohibits only the disclosure of 'protected information'. The Explanatory Memorandum suggests that section 159 prohibits the disclosure of both 'protected information' and 'protected documents'.⁸ A 'protected document' is defined as any document made or given under, or for the purposes of an excise law (**proposed subsection 159(6)**). This would appear to be a wider definition than 'protected information' which refers only to information about a person. It is interesting to note that while the prohibition on disclosure to a Minister refers to information (**proposed subsection 159(4)**), the prohibition on disclosure to a court refers specifically to protected information and documents (**proposed subsection 159(5)**).

Schedule 3 - Amendment of the *Customs Act 1901*

Diesel Fuel Rebate Scheme

The Diesel Fuel Rebate Scheme (DFRS) provides rebates of excise or customs duty on diesel fuel purchased for specific off-road uses, mainly in mining, agriculture, fishing and forestry operations. Legislative authority for the DFRS is contained in section 78A of the *Excise Act 1901* and section 164 of the *Customs Act 1901*. These Acts and the regulations

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made under them cover the usages of the fuel that attracts the entitlement to a rebate, matters relating to applications for a rebate and the assessment of rebate entitlement. The Acts also provide the necessary authority to pay and audit claims and to prosecute offences.⁹

At present ATO offices administer the DFRS under delegation from the CEO of Customs. The Bill transfers administration of the DFRS from Customs to the Commissioner and amends the *Excise Act 1901* and the *Customs Act 1901* to give legislative authority to this arrangement.

Items 3-8 of Schedule 3 make amendments to the definitions in section 4 of the *Customs Act 1901* to reflect the administrative changes regarding the DFRS. For example, Commissioner means the Commissioner of Taxation (**item 4**) and an authorised taxation officer is a person employed or engaged under the *Public Service Act 1999* who is exercising powers or performing functions in relation to a taxation law (**item 2**). The current definition of 'authorised officer' (ie a Customs officer) is amended to exclude the functions relating to DFRS (**item 1**).

Item 10 repeals and replaces section 7 of the *Customs Act 1901*. Existing section 7 declares that the Chief Executive Officer of Customs has the general administration of the Act. The purpose of **new section 7** is to declare that the Chief Executive Officer of Customs has the general administration of the Act apart from the diesel fuel rebate provisions. These provisions are administered by the Commissioner.

The provisions in the *Customs Act 1901* that relate to the DFRS are sections 164, 164A, 164AA, 164AB, 164AC, 164AD, 164AE, 164AF, 240A and subsection 273GAA(6). In line with the new administrative arrangements **items 17-31** substitute references in these provisions to CEO of Customs with references to the Commissioner and references to authorised officer (meaning a customs officer) with references to an authorised taxation officer. In addition a defined term 'diesel fuel rebate provision' will be inserted to refer to the sections of the *Customs Act 1901* that are relevant to the DFRS (**item 5**)¹⁰.

Section 234 of the *Customs Act 1901* deals with customs offences. **Item 93** repeals paragraph 234(1)(c) that deals specifically with the offence of obtaining a diesel fuel rebate to which a person is not entitled. This offence will be included in the offence provisions of *Excise Act 1901* (**item 89, Schedule 2, proposed paragraph 120(1)(vd)**).

Section 273GA deals with review of decisions by the AAT. **Item 99** repeals paragraphs 273GA(1)(ha), (hb), (hba) and (hc) which deal with decisions regarding diesel fuel rebate. **Item 101** inserts **proposed section 273JB** which details the new arrangements for revision of decisions relating to diesel fuel rebate. Review of such decisions will be in accordance with Part IVC of the *Taxation Administration Act 1953* whereby decisions must be referred to the Commissioner before referral to the AAT.

Item 95 replaces section 244 with a **new section 244** that provides a meaning of customs prosecution. The new section confirms that customs prosecutions do not include

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proceedings for the recovery of penalties for contravention of the diesel fuel rebate provisions.

Schedules 4 - 7 - Consequential Amendments of other Customs, Excise and Taxation Acts

Apart from the amendments to the *Customs Act 1901* and the *Excise Act 1901*, the Bill contains minor amendments to other customs, excise and taxation legislation.

The *Distillation Act 1901*, the *Spirits Act 1906* and the *Coal Excise Act 1949* are amended by **Schedules 4, 5 and 6** respectively. The amendments are mainly name changes to reflect the new administrative arrangements whereby excise matters are moved from Customs to the ATO. Penalty clauses are also updated so that penalties are redefined in terms of penalty units rather than monetary amounts.¹¹

Schedule 7 contains amendments to the *Customs Administration Act 1985*, the *Fuel (Penalty Surcharges) Administration Act 1997* and the *Taxation Administration Act 1953*.

Item 1 repeals and replaces a definition in section 3 of the Customs Administration Act of 'law of customs or excise' with a definition of 'law of customs'. **Items 2-8** remove the words 'or excise' from certain provisions in that Act.

Item 29 amends the definition of 'taxation law' in section 2 of the *Taxation Administration Act 1953* to clarify that the diesel fuel rebate provisions in the *Customs Act 1901* are taxation law (**proposed paragraph 2(bb)**). The exception being that offences under the diesel fuel rebate provisions will be prosecuted under the *Excise Act 1901* and not under Part III of the *Taxation Administration Act 1953* (**item 32, proposed subsection 2(2)**).

A definition of 'officer' is added to the *Fuel (Penalty Surcharges) Administration Act 1997* to reflect the new administrative arrangements. An officer is no longer a Customs officer but a person engaged under the *Public Service Act 1999* who is exercising powers or performing functions under a taxation law (**item 2, subsection 4(1)**).

Endnotes

- 1 Ian Ireland and Marco Bini, 'Mineral resources, taxation levies and charges: a legislative overview', *Background Paper*, (Department of the Parliament Library), no. 28, 1994/95.
- 2 The Chief Executive Officer is the person who, under the Minister, controls the Australian Customs Service.
- 3 Commonwealth Gazette, Special, No. S 514, 22 October 1998.
- 4 Commissioner of Taxation, *Annual Report, 1998-99*, p. 34

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- 5 Ibid, p. 3.
- 6 Australian Customs Service, *Annual Report, 1998-99*, p. 11.
- 7 House of Representatives, *Hansard*, 7 December 2000, p. 23589.
- 8 *Explanatory Memorandum*, p. 8.
- 9 Ibid, p. 18.
- 10 A similar definition is to be inserted into the Excise Act (item 9, Schedule 2) and the *Taxation Administration Act 1953* (item 28, Schedule 7).
- 11 For a fuller explanation of penalty units see p. 4 of the Digest.

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