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Excise Laws Amendment Bill (No. 1) 2002

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Excise Laws Amendment Bill (No. 1) 2002

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Contents

Purpose	1
Background	1
Basis of Policy Commitment	1
Pros and Cons.	2
Main Provisions	2
Excise Act	2
Distillation Act and Spirits Act	3
Concluding Comments	4
Endnotes.	4

Excise Laws Amendment Bill (No. 1) 2002

Date Introduced: 26 September 2002

House: House of Representatives

Portfolio: Treasury

Commencement: The measures in Schedule 1 commence on 14 May 2002 at 7:30 pm in the Australian Capital Territory. The other sections commence on the day when the Act receives the Royal Assent.

Purpose

The main purpose is to levy excise on the higher of the actual alcohol content or the labelled content of alcoholic beverages. Several other purposes are described below.

See also the Bills Digest for the Excise Tariff Amendment Bill (No. 2) 2002.

Background

Basis of Policy Commitment

On 14 May 2002, the Minister for Revenue and Assistant Treasurer, Senator the Hon. Helen Coonan, announced that through the 2002–03 Budget, the Government would amend the [Excise Act 1901](#) (Excise Act) to impose excise duty on the higher of the actual alcoholic strength or the labelled strength of beverages subject to excise. This measure would take effect from 7.30 pm Eastern Standard Time on 14 May 2002.¹

Under existing legislation, excise on Australian-made alcoholic beverages is levied on actual alcohol content. Customs duty on imports, on the other hand, is levied on the higher of labelled or actual alcohol content. The Bill would bring the basis on which excise is levied into line with the method used to calculate customs duty.

Levying customs duty and excise on the same basis would prevent manufacturers from taking advantage of the Australian and New Zealand Food Standards Code (the Code). According to the Minister's second reading speech and the Explanatory Memorandum (EM), some manufacturers are taking advantage of the Code to gain a market advantage.

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The Code allows for variations between labelled strength and actual strength for alcoholic drinks. Some manufactures are labelling their products as having a higher alcohol content than they actually have, giving rise to a market advantage. Presumably, buyers are attracted to such drinks because they seem to offer more 'bang for buck' than competing drinks.

The Excise Act does not specify how the volume of alcohol in a beverage is to be ascertained. The Bill would also allow the Commission of Taxation to establish rules for ascertaining the volume of alcohol.

Pros and Cons

A general principle underlying customs and excise legislation is that customs duty and excise should be levied on the same basis. In that way, importers and domestic producers face a 'level playing field'. Different bases for levying customs duty and excise could give rise to unintended protection for or disadvantaging of domestic production compared to imports. A positive feature of the Bill is that customs duty and excise would be levied on the same basis. The Bill would also prevent manufacturers from taking advantage of the tolerance between actual and labelled alcohol levels in the Code.

Main Provisions

The Bill would amend three Acts:

- the Excise Act
- the [Distillation Act 1901](#) (the Distillation Act) and
- the [Spirits Act 1906](#) (the Spirits Act).

The main provisions relate to the Excise Act. The provisions in the other two Acts complement the amendments to the Excise Act.

Excise Act

The Schedule to the [Excise Tariff Act 1921](#) lists various goods and the rates of excise that apply to them under various 'item' headings. To define 'alcoholic beverages' to which rules will apply, **item 5** would insert a new section in the Excise Act, **proposed section 77A**, which refers to certain items in the Schedule as alcoholic beverages.

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Item 6 would insert **proposed sections 77FA** and **77FB**:

- **proposed subsection 77FA(1)** would make the basis for levying excise the higher of the labelled alcohol content or the actual content. It does so by providing that if the labelled volume exceeds the actual volume, excise is levied on the labelled volume. **Proposed subsection 77FA(2)** provides that where alcoholic beverages are entered for home consumption with some labelled and some not, the unlabelled goods are to be treated as if they were labelled.
- **proposed section 77FB** empowers the Commissioner for Taxation to set rules for determining the alcohol content of beverages. **Proposed subsection 77FB(1)** allows the Commissioner to make written determinations of the rules. **Proposed subsection 77FB(2)** allows the rules to specify sampling methods and take account of 'unavoidable variations directly attributable to the manufacturing process'. **Proposed subsection 77FB(4)** provides that a determination applies only to goods entered for home consumption on or after the time when the determination is made.

Distillation Act and Spirits Act

Items 1 and **7** insert identical wording into the Distillation Act and the Spirits Act respectively. **Item 1** inserts two proposed subsections:

- **proposed subsection 6(2A)** provides that the volume of alcohol may be determined in accordance with the rules established in section 77FB of the Excise Act, and
- **proposed subsection 6(2B)** provides that if section 77FB of the Excise Act applies, then customs duty is to be determined in accordance with that section. In other words, the effect would be for excise and customs duty to be levied on the same basis.

With the adoption of rules for ascertaining alcohol content, the existing provision (section 46) of the Distillation Act for determining the strength of spirits becomes redundant. **Item 2** repeals section 46.

The amount of alcohol in distilled products is sometimes difficult to determine. Section 47 of the Excise Act uses the word 'obscurator' to refer to this problem and sets out how to deal with it. **Item 3** repeals section 47 and replaces it with a **proposed section 47**. The latter provides that when alcoholic strength cannot be ascertained by application of rules, the strength may be ascertained 'after distillation or in any prescribed manner'.

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Concluding Comments

The practice of labelling drinks as having a higher alcohol content than they actually have would seem at least to violate business ethics if not the *Trade Practices Act 1974*.

Paragraph 1.5 of the EM states that levying excise on the actual content—rather than the (higher) labelled content—could result in a loss of revenue. This *assumes* that excise should be levied on the same basis as customs duty, which is levied on the higher of the labelled or actual content. But since excise is currently levied on actual content, there is, under existing excise legislation, no loss of revenue. Indeed, as the EM confirms, a small revenue gain is likely.

Endnotes

- 1 Senator the Hon. Helen Coonan, 'Imposition of Excise on Higher of Labelled or Actual Alcoholic Strength', [Press Release C56/02](#), 14 May 2002.

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