

2023

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT BILL 2023: STREAMLINING EXCISE AND
CUSTOMS ADMINISTRATION

EXPOSURE DRAFT EXPLANATORY MATERIALS

Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
Excise Act	<i>Excise Act 1901</i>
Excise Tariff Act	<i>Excise Tariff Act 1921</i>

Chapter 1: Small-scale repackaging of beer into smaller containers

[Click here to insert a table of contents.]

Outline of chapter

- 1.1 Schedule X to the Bill amends the Excise Act so that the repackaging of beer is not taken to be the manufacture of beer if it meets certain requirements. The beer must be repackaged into a container of no more than 2 litres which is not pressurised and is not capable of being pressurised. In addition, the beer being repackaged at particular premises in a financial year must be less than 10,000 litres. The amendments would effectively remove the requirement for a person to hold a manufacturer licence or pay excise duty where beer is repackaged in this particular manner.

Context of amendments

- 1.2 Currently, the repackaging of beer in certain circumstances is taken to be the manufacture of beer. This means that a manufacturer licence will be required in order to repackage the beer, regardless of the amount being repackaged, and excise duty must be paid.
- 1.3 Manufacturer licence holders carry significant obligations that are more appropriate to entities repackaging beer on a commercial basis. These obligations are not appropriate to the entities engaged in small-scale repackaging of beer which are intended to be consumed off-premises within a short period of time.
- 1.4 These amendments will, in effect, remove the onerous licensing obligations on businesses who engage in small-scale repackaging of beer, such as bars and pubs.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

New law	Current law
Generally, beer repackaged in a certain manner is not taken to be the manufacture of beer for the purposes of the Excise Act. The beer must be repackaged into exempt beer containers, which are sealed individual containers of no more than 2 litres, which are not pressurised and are not capable of being pressurised. In addition, less than 10,000 litres of beer is repackaged into the exempt beer containers at particular premises in a financial year. If all of these requirements are met, then the beer repackaging will not be taken to be the manufacture of beer and a manufacturer licence will not be required.	Generally, the repackaging of beer from an individual container of more than 48 litres or between 8 and 48 litres and designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations into sealed individual containers of a smaller size and/or a different delivery system is taken to be the manufacture of beer. Accordingly, businesses are required to hold a manufacturer licence if they repackaged beer under these circumstances.

Detailed explanation of new law

Certain repackaging of beer is not taken to be the manufacture of beer

- 1.5 Section 25 of the Excise Act prohibits a person who does not hold a manufacturer licence to manufacture excisable goods, as defined in the Excise Act, in Australia. Relevantly, excisable goods mean goods in respect of which excise duty is imposed by the Parliament. The Schedule to the Excise Tariff Act lists the goods that are subject to excise duty, such as beer, and the rate of duty payable.
- 1.6 Generally, beers packaged in containers exceeding 48 litres, or packaged in containers of at least 8 litres and not exceeding 48 litres and designed to connect to pressurised gas delivery system or pump delivery system are subject to a lower rate of duty compared to beers packaged in other types of containers. Previously, some businesses have repackaged beer from these containers and circumstances in order to pay a lower rate of duty. Section 77FC of the Excise Act addressed the issue by ensuring that the repackaging of beer in relation to certain types of containers is taken to be the manufacture of beer, which then required the person manufacturing beer to hold a manufacturer licence and pay excise duty.

- 1.7 Schedule X to the Bill amends the Excise Act so that if the beer repackaging meets the following criteria, it is not taken to be manufacture of beer for the purposes of this Act. This would mean that excise duty is not payable on the repackaged beer meeting these criteria and there would be no requirement to hold a manufacturer licence in relation to the beer repackaging. In effect, the amendments introduce an exception to the rule that repackaging beer in relation to certain types of containers is taken to be the manufacture of beer.
- [Schedule x, items 1 and 2, subsection 77FC(1) of the Excise Act]***
- 1.8 All criteria must be met for the exception to apply; that is, for the repackaging of beer to not be taken to be the manufacture of beer. The first criterion is about the container for the repackaged beer and the second criterion is about the threshold of repackaged beer which is specified in relation to the premises and the financial year of the repackaging. A business may have more than one premises, and each premises has its own threshold.
- 1.9 The purpose of these criteria is to assist businesses who repackage small amounts of beer intended for immediate consumption by ensuring that they are exempt from the requirement to hold a manufacturer licence or pay excise duty where the requirements are met.
- [Schedule x, item 3, subsection 77FC(2) and (3) of the Excise Act]***
- 1.10 First, the beer is repackaged into exempt beer containers, which is a sealed individual container:
- of no more than 2 litres; and
 - that is not pressurised; and
 - that is not capable of being pressurised.
- 1.11 The effect of this provision is to specify the requirements of the container into which the beer is repackaged. The container containing the repackaged beer must meet all these requirements to be an exempt beer container.
- 1.12 Each container holding the repackaged beer must be sealed and of no more than 2 litres in capacity because the intention is to facilitate small-scale repackaging of beer only.
- 1.13 In addition, the container is not pressurised and is not capable of being pressurised.
- 1.14 The intention of this criterion is to capture containers which are designed to hold beer for a short period of time so that it can be consumed soon after the repackaging, and not to capture containers which are capable of being pressurised after the repackaging and therefore prolong the life of the beer.
- [Schedule x, item 3, subsection 77FC(3) of the Excise Act]***
- 1.15 Secondly, if the beer is repackaged at particular premises in a financial year, then less than 10,000 litres of beer is repackaged at particular premises in the financial year. The effect of this criterion is that once the 10,000-litre threshold is met at particular premises in a financial year, then the repackaging is taken to be the manufacture of beer. In effect, this means that excise duty is payable

for repackaged beer amounts of 10,000 litres and above and does not need to be paid in relation to so much of the amounts that is less than 10,000 litres at that premises in a financial year. A manufacturer licence will also need to be held once the repackaged amount is at 10,000 litres.

[Schedule x, item 3, subsection 77FC(2) of the Excise Act]

- 1.16 For businesses who repackaging beer at more than one premises, each premises is subject to its own threshold in terms of the volume of repackaged beer.
- 1.17 For example, in the 2022-23 financial year, a business has two separate premises where it repackages 9,000 litres of beer at Premises A, and 15,000 litres at Premises B. The beer is repackaged into exempt beer containers at each premises. For Premises A, the repackaging of beer is taken not to be manufacture and the business is not required to pay excise duty for the 9,000 litres of repackaged beer. However, for Premises B, the business will need to pay excise duty for each litre of repackaged beer more than 10,000 litres (i.e., 5,000 litres). The business will also need to apply for, and hold, a manufacturer licence as soon as the 10,000 litres threshold is met. The business will not need to pay excise duty up to 10,000 litres of beer which is repackaged at the premises.
- 1.18 However, if in the example above, Premises B only repackaged 9,000 litres of beer, then the repackaging of beer is taken not to be manufacture and the business is not required to pay excise duty for the beer. Both Premises A and Premises B would be under the threshold.

Consequential amendments

- 1.19 None.

Commencement, application, and transitional provisions

- 1.20 The amendments made by Schedule X will commence on 1 July 2023 and apply to beer repackaged on or after the commencement date.

[Schedule x, item 4]