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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

EXPOSURE DRAFT EXPLANATORY MATERIALS

TREASURY LAWS AMENDMENT BILL 2024: STREAMLINING EXCISE
ADMINISTRATION FOR FUEL AND ALCOHOL

EXPOSURE DRAFT EXPLANATORY MATERIALS

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
ABF	Australian Border Force
ABN	Australian Business Number
ATO	Australian Taxation Office
Bill	Treasury Laws Amendment Bill 2024: streamlining excise administration for fuel and alcohol
CEO	Commissioner of Taxation
Comptroller-General	Comptroller-General of Customs
Customs Act	<i>Customs Act 1901</i>
EEGs	Excise-equivalent goods
Excise Act	<i>Excise Act 1901</i>
Excise Tariff Act	<i>Excise Tariff Act 1921</i>
Public register	Excise and Excise-Equivalent Warehouse Licences Register

Chapter 1: Streamlining excise administration for fuel and alcohol

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Outline of chapter

- 1.1 This Bill amends the Excise Act and Customs Act to streamline and align licence application fees and renewal requirements for entities who hold, or seek to hold, excise licences to manufacture or store alcohol and fuel and customs warehouse licences to warehouse EEGs (whether or not other customable goods are held within the warehouse) by:
- removing the renewal requirements so that the licences are ongoing until they are cancelled;
 - removing the fees associated with applying for, renewing and varying these licences;
 - enabling a licence to be granted in relation to more than one premises or warehouses and providing default movement permission for excise goods and EEGs;
 - establishing a public register, published on an ATO website, of current licences including the licence holder's name and ABN, and the Act under which the licence was granted; and
 - removing the requirement for onshore producers of crude oil and condensate to hold a licence where the cumulative production threshold from a particular field is less than 30 million barrels.

Context of amendments

- 1.2 On 22 December 2020, a Deregulation Taskforce was commissioned to conduct a review into Australia's excise and excise equivalent regulatory framework for fuel and alcohol. The Taskforce found various areas where the regulatory framework had duplicative and disproportionate regulatory burdens.
- 1.3 The Taskforce provided recommendations to streamline regulatory requirements across the excise and customs systems. These amendments implement the *2022/23 March Budget measure 'Streamlining excise administration for fuel and alcohol'* package.
- 1.4 These amendments seek to alleviate the administrative burden on businesses in the excise and customs systems by streamlining licence application and renewal requirements, removing unnecessary fees and charges related to licences and providing for default movement permissions between licensed entities. Additionally, these amendments will make information about licensed entities readily available on a public register.

What goods and licences are affected by these changes?

- 1.5 The amendments in this Bill apply only to fuel and alcohol goods and do not apply to tobacco or tobacco goods.
- 1.6 The amendments to the Excise Act apply only to manufacturer licences (other than manufacturer licences that authorise the production of tobacco goods) and storage licences under the Excise Act. In this Chapter, unless otherwise stated, a reference to an 'excise licence' is a reference to such a licence. Manufacturer licences that authorise the manufacture of tobacco goods, producer licences and dealer licences are not affected by these amendments.
- 1.7 The amendments to the Customs Act in this Bill apply only to warehouse licences granted under section 79 of that Act that authorise the warehousing of EEGs or kinds of EEGs (other than duty-free stores, providores and catering bonds). In this Chapter, unless otherwise stated, a reference to an 'EEG warehouse licence' is a reference to such a licence. This licence can also authorise the warehousing of imported goods that are not EEGs. However, licences issued under section 79 that only authorise the warehousing of "non-EEGs" are not affected by these changes.
- 1.8 In this Chapter, the term 'entity-level' licence is used to refer to either an 'excise licence' covering multiple premises or an 'EEG warehouse licence' covering multiple places as the context requires.

Licence renewals

- 1.9 Under the Excise Act, excise licence holders are required to renew their licences every 3 years. A licence holder who has multiple licensed premises is required to renew each licence separately.

- 1.10 Under the Customs Act, EEG warehouse licence holders are required to renew each of their licences annually. Licence holders who have multiple licensed places or warehouses are required to renew each licence separately.
- 1.11 The renewal process imposes a regulatory burden as businesses expend time, effort, and resources, particularly those entities who renew multiple licences for multiple sites, sometimes at different times.
- 1.12 The intended outcome of these amendments is to reduce this regulatory burden by providing that these licences affected by these amendments remain in force until they are cancelled. The ability for the CEO and the Comptroller-General to manage integrity risks around the licensing of premises and warehouses will be retained.

Removal of fees and charges

- 1.13 No fees are currently charged for an application for a licence issued under the Excise Act. However, the Excise Act provides for a fee for an application for a manufacturer licence to be prescribed.
- 1.14 In contrast, under the Customs Act there are charges associated with customs warehouse licences including for licences authorising the warehousing of EEGs. This has created an inconsistency between how the Excise Act and the Customs Act treat equivalent goods, depending on whether they are domestically-manufactured or imported.
- 1.15 The intended outcome of the amendments is to align the two systems by removing the ability to charge licence fees for relevant licences under the Excise Act and under the Customs Act.

Entity-level licensing and movement permissions

Entity-level licensing

- 1.16 Under the Excise Act a separate licence is required for each premises where excisable goods are manufactured or stored. Similarly, under the Customs Act a separate licence is granted for each warehouse authorised to store EEGs. Often these premises and warehouses are under the same operational control and management. This means there is a duplication of administrative work for excise licence holders and EEG warehouse licence holders who control multiple licensed premises or warehouses.
- 1.17 To address these issues, the intended outcome of these amendments is to allow an applicant to apply for one licence in relation to multiple premises or warehouses under each of these Acts, if sought by the applicant. The policy intention is to enable a licence holder to consolidate the various premises or warehouses in their control into a single licence under the relevant Acts. Further flexibility is provided by allowing entities, with approval, to vary their licence to add or remove premises or warehouses as necessary. An applicant may still apply for a licence in relation to a single premises or warehouse. The applicant will still be required to provide information on each of their premises

or warehouses but would no longer be required to lodge separate applications for each premises.

- 1.18 The Collector and the Comptroller-General will retain the ability to vary, suspend and cancel an entity-level licence, or vary the licence to remove particular premises or warehouses covered by the licence.

Movement permissions

- 1.19 Generally, businesses cannot move excisable goods or EEGs on which excise duty or customs duty has not been paid (goods are colloquially referred to as “underbond” until the goods are delivered for home consumption or for exportation to a place outside Australia, whichever occurs first), between licensed premises or warehouses without specific regulator permission. This meant that, to move these goods underbond, businesses are required to seek permission and be approved, either on an ongoing basis from one specific place to another, or each time a movement happens. The Taskforce found that these permissions are very rarely refused in practice.
- 1.20 The policy is to provide a ‘default’ movement permission to an entity that is granted a licence that covers multiple premises or warehouses. This will allow for goods to move between licensed premises or warehouses without specific regulator permissions, unless that default permission is revoked. As such, if a licence is granted in relation to multiple premises, the policy intention is to allow the licence holder to, by default, have permission to move underbond goods of a similar kind between the licensed premises or warehouses specified on their licence and also to licensed premises or warehouses covered by the licence of another licence holder (in the case of customs warehouses; another licence that is authorised to store EEGs). In the case of EEG warehouse licences, the ‘default’ movement permission will apply to the movement of EEGs only.
- 1.21 The intended outcome of these amendments is to reduce the need for a network of single or continuing movement permissions in respect of specific licensed premises or warehouses.
- 1.22 To ensure necessary and appropriate regulatory oversight, the Collector and Comptroller-General will retain the ability to impose movement permission conditions on the removal of goods where there is an identified integrity risk associated with a licence holder or a particular premises or warehouse, and the existing controls over movement of goods to unlicensed premises or to a place of export will remain unchanged. Movement permissions for customs warehouses that are not authorised to store EEGs, duty free stores, catering bonds and providores will also remain unchanged.

Licence register

- 1.23 Businesses in the excise and customs systems often need to confirm the licence status of trading partners, for example, to store, sell and move goods underbond. Currently, this can only be done by contacting the Collector or by

contacting trading partners directly to confirm information, which potentially delays business movements and diverts regulator resources.

- 1.24 The intended outcome of the amendments is to assist businesses by making certain information about excise licences and EEG warehouse licences that are in force publicly available on an ATO website to reduce unnecessary engagement with the ATO and ABF.

Licences for onshore crude petroleum oil and condensate producers

- 1.25 The Australian excise system imposes duty on domestically produced crude petroleum oil and condensate. However, excise duty is payable only once the relevant oil and gas fields surpass cumulative production of 4767.3 megalitres of stabilised crude petroleum oil and condensate (which is equivalent to 30 million barrels). There are only two areas that have reached this level of production, and both are located offshore.
- 1.26 Offshore producers and onshore producers are treated differently in one respect; for offshore producers, cumulative production below the first 4767.3 megalitre threshold in a particular field is exempt from excise duty and for onshore producers, a ‘free rate’ of excise duty applies for production below this threshold.
- 1.27 Broadly, a person must hold an excise licence in order to manufacture excisable goods, as defined under the Act. This means that onshore producers are required to hold an excise licence even if no duty is payable. The current requirements impose an unnecessary regulatory burden on onshore producers where no revenue is collected.
- 1.28 The intended outcome of the amendments is to align the requirements for onshore and offshore producers by requiring onshore producers to hold a licence and pay excise duty only when they have cumulatively produced over 4767.3 megalitres of stabilised crude petroleum oil and condensate from a particular field.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

<i>New law</i>	<i>Current law</i>
Ceasing licence renewals	
<p><i>Customs EEG warehouse licence</i></p> <ul style="list-style-type: none"> An EEG warehouse licence remains in force until it is cancelled by the 	<p><i>Customs warehouse licensed to store EEGs</i></p> <ul style="list-style-type: none"> A customs warehouse licensed to store EEGs remains in force until 30 June next following the grant of the licence, however it can be renewed for 12

Streamlining excise administration for fuel and alcohol

New law	Current law
Comptroller-General or at the request of the licence holder.	months and may be further renewed annually until cancelled.
<i>Excise licence</i> An excise licence remains in force until it is cancelled by the Collector or at the request of the licence holder.	<i>Excise licence</i> An excise licence remains in force, unless cancelled earlier, until 30 September after the second anniversary of the day on which it is granted. If renewed, it is renewed for a period of 3 years unless cancelled earlier.
Removal of fees	
<i>Customs EEG warehouse licence</i> <ul style="list-style-type: none"> No fees payable in respect of applying for, the grant of or the variation of an EEG warehouse licence. 	<i>Customs warehouse licensed to store EEGs</i> <ul style="list-style-type: none"> Charges are payable in respect of a customs warehouse licensed to store EEGs for the application, grant, renewal and variation of such a licence.
<i>Excise licence</i> <ul style="list-style-type: none"> No fees are payable in relation to holding a licence. There is no power to prescribe a fee. 	<i>Excise licence</i> <ul style="list-style-type: none"> No fees are payable in relation to holding an excise licence, however, a fee may be prescribed in the regulations for a manufacturer licence.
Removing requirement for onshore producers to hold a licence	
Onshore producers of stabilised crude petroleum oil and condensate do not have to hold a licence under the Excise Act where the field has produced less than the cumulative threshold of 4767.3 megalitres of stabilised crude petroleum oil and condensate.	Onshore producers of stabilised crude petroleum oil and condensate must hold a licence under the Excise Act where the field has produced less than the cumulative threshold of 4767.3 megalitres of stabilised crude petroleum oil and condensate.
Entity-level licensing and movement permissions	
<i>Customs EEG warehouse licence</i> <ul style="list-style-type: none"> An ‘EEG warehouse licence’ is available for entities to warehouse at least EEGs and can cover more than one warehouse. On the grant or variation of such a licence, automatic movement permission will be provided to allow the entity to move EEGs to another licensed warehouse provided that it is authorised to warehouse EEGs of that kind. 	<i>Customs warehouse licensed to store EEGs</i> <ul style="list-style-type: none"> A separate customs warehouse licence is granted for each place where EEGs (and other goods under customs control) are stored. Individual movement permissions are required move EEGs.
<i>Excise licence</i>	<i>Excise licence</i>

New law	Current law
<ul style="list-style-type: none"> • A manufacturer or storage licence can be granted to cover more than one premises. • On the grant or variation of such a licence, an automatic movement permission will be provided to allow the entity to move goods underbond to other licensed premises. 	<ul style="list-style-type: none"> • A separate excise licence is granted for each premises where excisable goods are manufactured or stored. • Individual movement permissions are required to move goods.
Excise and Excise Equivalent Warehouse Licence Register	
<p>The ATO must publish and maintain a register of information about current excise licences and EEG warehouse licences including the name of the licence holder, the licence holder's ABN (if any) and the Act under which the licence was granted.</p>	<p>No equivalent.</p>

Detailed explanation of new law

1.29 The Bill builds on existing concepts within the relevant legislative framework in the Excise Act and the Customs Act. To achieve the intended policy outcomes, ancillary amendments are made to ensure that the amendments fit in with the legislative framework.

1.30 The purpose of these amendments is to:

- remove renewal requirements so that licences to which these amendments apply are ongoing until they are cancelled;
- remove the fees associated with applying for, renewing and varying these licences;
- enable licences to be granted in relation to one or more premises and provide default movement permissions for goods between licensed premises;
- establishing a public register, published on an ATO website, of current licences including the licence holder's name and ABN, and the Act under which the licence was granted; and
- remove the requirement for onshore producers of crude oil and condensate to hold a licence where the cumulative production threshold from a particular field is less than the threshold of 30 million barrels.

Licensing—excise licences and EEG warehouse licences

- 1.31 The amendments to the Customs Act in this Bill apply only to warehouse licences granted under section 79 of that Act that authorise the warehousing of EEGs or kinds of EEGs (other than duty-free stores, providores and catering bonds) and such warehouses may also be authorised to warehouse non-EEGs, i.e. imported goods that are not EEGs. The amendments insert a new definition of ‘excise-equivalent warehouse licence’ into the Customs Act to this effect.
[Schedule xx, item 1, subsection 4(1) of the Customs Act]
- 1.32 A licence in force when the amendments commence that comes within the new definition will be an excise-equivalent warehouse licence for the Customs Act and will not need to be reissued.
- 1.33 The amendments to the Excise Act apply only to manufacturer licences (other than manufacturer licences that authorise the production of tobacco goods) and storage licences under the Excise Act. The Bill includes a number of amendments to the definitions in the Excise Act to clarify the different kinds of licences under the Excise Act and to support these changes in relation to licences affected by these amendments.
[Schedule #, items 60 to 69, subsection 4(1), definitions of approved place, dealer licence, paragraph (c) of the definition of excise place, definitions of factory, licence, manufacturer licence, producer licence, proprietor and storage licence, and section 6C of the Excise Act]

Ceasing renewal requirements

Removing requirement for excise licences to be renewed

- 1.34 Excise licences affected by these amendments will remain in force until they are cancelled.
[Schedule #, item 90, subsection 39E(2) of the Excise Act]
- 1.35 This means that manufacturer licences (other than manufacturer licences that authorise the production of tobacco goods) and storage licences under the Excise Act will only cease to be in force if they are cancelled, either by the Collector or at the request of the licence holder. The current circumstances in which an excise licence may be suspended or cancelled, as outlined in Division 4 of the Excise Act, remain unchanged and continue to apply to all licences under the Excise Act.
- 1.36 As tobacco or tobacco goods are out of scope of this measure, the duration of excise licences related to these goods is unchanged. Such a licence will remain in force until the end of the next 30 September after the second anniversary of the day on which the licence is granted. These licences can be renewed under existing section 39F. Additionally, paragraph 39E(2)(c) remains applicable to outline the expiration of licences that have been renewed.
- 1.37 For completeness, section 39F dealing with licence renewals will not apply to the licences in scope of this measure. If entities comply with the Excise Act and any conditions imposed, it is intended that the entities only apply once for

their manufacturer or storage licence. If a licence is cancelled, and the relevant entity wishes to have a manufacturer or storage licence for the same premises, they will need to apply for a new licence under section 39 of the Excise Act. **[Schedule #, Part #, items 90-93, subsections 39E(2), 39F(1), 39F(7) of the Excise Act]**

Suspending dormant licences

1.38 As the requirement to renew a licence has ceased, to manage dormant licences, a new ground for suspending a licence is added so that a licence that is inactive does not remain in the excise system potentially using up regulator resources. Where a licence holder has not conducted any activities authorised by the licence at any premises covered by the licence for a period of at least 3 years, the licence (including an entity-level licence) may be suspended. A licence can be suspended in relation to particular premises where the inactivity relates to those premises. This ground for suspension is also a ground for cancellation. This provision relates to all licences that do not require renewal. **[Schedule #, Part #, items 98, 99 and 117, paragraph 39G(1)(o), paragraph 39G(1A)(d) and 39L(1)(a) of the Excise Act]**

1.39 However, for an entity-level licence covering multiple premises, the Collector has the power to suspend a licence in relation to particular premises rather than the licence in its entirety. The grounds for suspending a particular premises in an entity-level licence are contained in subsection 39G(1A) and include:

- existing grounds such as:
 - the fit and proper test;
 - the physical security of the premises;
 - the adequacy of the plant and equipment;
 - breach of conditions imposed on the licence in relation to the premises; and
- an additional ground for suspension in relation to a particular premises where there has been no activity that is authorised for a period of at least 3 years.

1.40 These amendments also amend the existing paragraphs 39G(1)(d), (g), (i) and (k) to make clear that those provisions only apply in relation to a licence that covers only one premises whereas 39G(1A) is meant to deal with particular premises covered in an entity-level licence. **[Schedule #, Part #, items 95, 96, 97, 99 and 100, section 39H, subsection 39G(1A) and paragraph 39G(1)(d), (g), (i) and (k) of the Excise Act]**

Excise manufacturer and storage licences in force on 1 July 2024

1.41 Excise licences affected by these amendments will not be required to be renewed if they are granted on or after 1 July 2024. Additionally, excise licences that are in force on 1 July 2024, will also benefit from these amendments and those licences will not be subject to the renewal requirement

and remain ongoing until suspended or cancelled.
[Schedule #, Part # item 149, subsection (2)]

Removing requirement for EEG warehouse licences to be renewed

- 1.42 Similarly, an EEG warehouse licence will remain in force from when it is granted until it is suspended or cancelled by the Comptroller-General, or cancelled at the request of the licence holder. The current circumstances in which such a licence can be suspended or cancelled under Part V of the Customs Act remain unchanged and apply to all section 79 customs warehouse licences. To put beyond doubt, a customs warehouse licence that does not authorise the warehousing of EEGs is not affected by these amendments. Such a licence ceases to be in force and is to be renewed in accordance with Part V of the Customs Act.
- 1.43 The amendments provide that an EEG warehouse licence is ongoing and remains in force until it is cancelled. All other warehouse licences retain their existing duration, that is, they expire on 30 June and if they are renewed, they are in force for 1 year and can be further renewed.
[Schedule #, Part #, items 21 and 24, subsections 83(1), (1A), and (1B), paragraph 83(1A)(b)(ii) and subsection 84(4) of the Customs Act]

EEG warehouse licences in force on 1 July 2024

- 1.44 EEG warehouse licences that are granted or take effect on or after 1 July 2024 will not be subject to the renewal requirements and will remain ongoing until suspended or cancelled. It is anticipated that most EEG warehouse licences will be in force until 30 June 2024. For entities who hold these licences and have applied for and been granted a renewal, these licences will come into force on 1 July 2024 and will remain in force until suspended or cancelled.
[Schedule #, Part #, item 149, subsection (1)]
- 1.45 The Comptroller-General will be able to use compliance measures to address situations where entities seek to take advantage of the removal of renewal requirements associated with EEG warehouse licences. Existing powers under the Customs Act, include the power to:
- issue a notice with intent to cancel that also allows the suspension of a warehouse licence under section 86;
 - cancel a warehouse licence under section 87;
 - impose additional conditions to which a warehouse licence is subject under section 82A; and
 - vary the conditions to which a warehouse licence is subject.

Removing certain licence fees

Removing power to prescribe licence fees under the Excise Act

- 1.46 The Bill amends the Excise Act to ensure that there are no application fees for excise manufacturer or storage licences. This is achieved by removing the

existing power in the Act to prescribe fees in relation to an application for a manufacturer licence. Currently, there are no prescribed fees for these applications.

[Schedule #, Part#, item 75, paragraph 39(2)(f) of the Excise Act]

Removing EEG warehouse licence fees under the Customs Act

1.47 To align the treatment of excise licences and EEG warehouse licences, the Customs Act is amended so that no fees are payable for the application, grant, or variation of an EEG warehouse licence. This is achieved by:

- carving out EEG warehouse licences from the charges payable under section 85 of the Customs Act for the grant and renewal of such a licence; and
- carving out EEG warehouse licences from the charges payable under subsection 81B(2) for an application to vary a licence.

[Schedule #, Part #, items 5, 13, 25 and 26, paragraph 80(1)(1A)(g) and 81B(2)(e) and subsections 85(1), (2A) of the Customs Act]

1.48 The Comptroller-General retains the ability to impose conditions on, suspend or cancel licences where it appears necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Act. This will allow the Comptroller-General to use compliance measures to address situations where entities seek to take advantage of the removal of requirements for renewal associated with EEG warehouse licences.

1.49 The charge imposed under section 85 of the Customs Act to renew a licence will apply to licences that are in force before 30 June 2024. If a licence is renewed before 1 July, generally the licence is in force from 1 July with the associated charge for renewing a licence being due on 1 July unless different arrangements are in place. These amendments mean that such a licence will not be subject to a renewal fee. Additionally, any new licences granted on or after 1 July 2024 will not be subject to a charge for the application or grant of the licence.

1.50 If before commencement of these amendments on 1 July 2024, a licence holder has applied to renew their licence or applied for a new licence that would come into force on or after 1 July 2024 and paid the renewal charge or application charge, the licence holder is entitled to a refund.

[Schedule xx, item 149, subsection (1)]

Entity-level licences—manufacturer and storage licences under the Excise Act

1.51 These amendments will allow entities to apply for a manufacturer or storage licence in relation to multiple premises or places under one licence. Subject to the CEO imposing conditions on the licence in relation to any premises covered by the licence, this will provide flexibility for businesses to structure their licence in a manner that suits their needs. Broadly, this means that an entity may be able to apply for:

- one ongoing manufacturer licence for one premises or one ongoing storage licence for one premises;
- one ongoing manufacturer licence for multiple premises or one ongoing storage licence for multiple premises; and
- a variation to an existing ongoing manufacturer licence to add or remove premises or to vary an existing storage licence to add or remove premises.

1.52 The amended definitions of manufacturer licence and storage licence make it clear that:

- a manufacturer licence can be granted to cover one or more premises;
- a manufacturer licence in relation to tobacco goods can only be granted to cover one premises; and
- activities that can be carried out at each of the premises covered by a storage licence.

[Schedule #, Part #, items 69 and 74, section 6C and paragraph 39(2)(d) of the Excise Act]

1.53 To help with the readability of provisions and to clarify how they will operate, the Excise Act is amended to change references to premises ‘specified in’ a licence to premises ‘covered by’ a licence, and to refer to licences as ‘authorising’ activities in relation to goods. These amendments:

- place the focus on what a licence does rather than its form;
- address situations where the licence is varied by notice to include additional premises and those premises would not be ‘specified’ in the licence;
- clarify the interaction between various things that can be authorised under a licence now, that licences can cover multiple premises, for example, certain conditions can apply to particular activities in relation to specified goods at specified premises; and
- ensure that provisions will continue to operate as they do currently for the excise licences that relate to a single premises.

[Schedule #, Part #, items 62, 70, 86, 87, 88, 89, 101 to 103, 109, 115, 118, 122, 125, 126, 127, 130, 133, 134, 140, and 144 to 148, sections 27, 30, 31, 35, 36 and 39P, subsections 39M(1), (3) and (4), 77E (heading) and 77F(1) and 77F(3), 39N(1)(a) 86(3) and paragraphs 4(1)(c), 39D(1)(a),(d),(g), (h) and (j), subparagraph 39DA(3)(c)(ii), paragraphs 39K(1)(b), 39K(6)(a)-(c), 39L(3)(b), 51(a)-(b), 116(1)(bc) and 77HB(a) of the Excise Act]

Application for an entity-level licence

1.54 It is intended that it be open to the Collector to allow an entity-level licence to authorise different kinds of goods for different premises. Conditions on the entity-level licence in relation to each premises would allow the Collector to

regulate what occurs at each premises including not issuing or varying an entity-level licence that allows for manufacture and storage of completely different goods. In practice, it is not anticipated that consolidation of existing manufacturer licences would change existing arrangements or conditions on individual premises covered by this entity-level licence.

- 1.55 An entity may apply for a manufacturer or storage licence in relation to one or more premises which is permissible under the definition of those licences under section 6C. Paragraph 39(2)(d) is amended so that the application may contain descriptions of multiple premises if an entity is applying for an entity-level licence.
[Schedule #, Part #, item 73, paragraph 39(2)(d) and subsections 6C(2) and (4) of the Excise Act]
- 1.56 The amendments do not specify the type of information that must be included in the application about the kinds of goods to be stored, or activities to be undertaken, at each premises. A licence application falls within scope of the CEO's approved form framework, which empowers the CEO to approve necessary requirements and has broad discretion to determine the form and manner in which information is given. If anything further is required, paragraph 39(2)(g) of the Excise Act allows further information to be prescribed for this purpose.
- 1.57 Once an application for a licence has been submitted, the Collector has a discretion to grant or refuse to grant the licence. Amendments to subsection 39A(1) ensure that the Collector must provide written notice of the decision. Additionally, if an application is made in relation to more than one premises, the Collector may grant a licence covering all or only one, or some of the premises. This is to ensure that if the Collector determines that a particular premises should not be licensed, the entity may still be granted a licence in relation to the other premises.
[Schedule #, Part #, items 76 and 77, subsection 39A(1) and 39A(1A) of the Excise Act]
- 1.58 A new ground is included to subsection 39A(2) so that the Collector may refuse to grant a licence where in relation to a particular premises, a natural person who would participate in the management or control of the premises is not a fit and proper person. For completeness, no substantive amendments are made to the provisions (sections 39B and 39C) related to how the Collector is to determine whether a natural person or a company is fit and proper.
[Schedule #, Part #, items 79 and 80, paragraph 39A(2)(n) and subsection 39A(2A) of the Excise Act]
- 1.59 Amendments are made to paragraph 39B(c)(i) and subsection 39C(c) so that the Collector may consider whether the person has held a licence that has been varied by the Collector to no longer cover a premises, or participated in the management or control of a company that has had its licence revoked or whether a company has held a licence that has been revoked. This is to ensure that the revocation or variation of a licence is taken into account because prior to the amendments such a revocation or variation may have been the equivalent of a cancelled licence.

[Schedule #, Part #, items 82, 84 and 85, paragraph 39C(c), subparagraphs 39B(c)(ia) and (iii) of the Excise Act]

- 1.60 Further, in relation to manufacturer and storage licences, the Collector may consider the physical security of the premises covered by the licence or the suitability of plant and equipment. This ground is inserted to allow the consideration of these grounds in relation to one or more of multiple premises that may be covered in the licence. Paragraphs 39A(2)(d),(g) and (i) are repealed and the new ground refers to new subsection 39A(2A).

[Schedule #, Part #, items 78, 79, 80, paragraph 39A(2)(n) and subsection 39A(2A)]

- 1.61 Paragraph 39A(2)(n) refers to new paragraph 39A(2A)(a) which is a ground for the Collector to refuse to grant a licence if a natural person who would participate in the management or control of the premises is not a fit and proper person. Importantly, this ground applies to all licence applications including the tobacco licences that are not otherwise in scope of this measure. It is made clear in paragraph 39A(3)(b) that 39A(2A)(a) is a relevant ground to consider for those licences.

[Schedule #, Part #, items 71, 72, 80 and 81, paragraphs 39(2)(c), 39A(3)(b) and 39A(2A)(a)]

Variation of licences to include additional premises

- 1.62 The Bill inserts a new Division 3A into the Excise Act to deal with variation of licences to include additional premises. Some entities hold multiple storage or manufacturer licences for multiple premises. These entities will be able to apply to the Collector to consolidate their licences in a manner they see fit and to add additional premises to their licences.

[Schedule #, Part #, item 94, Division 3A, and subsection 39FA(1) of the Excise Act]

- 1.63 The information to be included in an application is the minimum information required to allow the Collector to be able to identify the relevant premises and licences and to consider any unlicensed premises proposed to be added to a licence. The application must:
- be in a form (if any) approved by the CEO; and
 - set out the name and address of the licence holder; and
 - identify the licence to be varied (to include additional premises); and
 - identify the additional premises covered by another licence or licences held by the entity and identify that other licence; and
 - if the additional premises are not covered by another licence held by the licence holder (new additional premises), it must contain a description of the additional premises and set out particulars that the Collector is required to consider for the purposes of 39A, 39B and 39C (which includes information related to the fit and proper tests as well as the adequacy of the physical security and equipment at the premises).

- 1.64 Importantly, the application makes a distinction between varying a licence to add premises already covered by another licence and new premises that are not covered by another licence. In relation to the latter, instead of applying for a licence under section 39, paragraph 39FA(2)(e) allows entities to vary an existing licence. However, the requirements that would ordinarily need to be satisfied if an entity was applying for a single premise licence still apply in relation to those premises. In certain circumstances, an entity may not need to provide information as required by subsection 39(2).
[Schedule #, Part #, item 94, subsection 39FA(2) of the Excise Act]
- 1.65 On application by a licence holder, the Collector may, by written notice, vary a licence to cover additional licensed premises. When varying the licence, the Collector must also vary the licence that had previously covered the premises (the second licence) to no longer cover those premises. If the second licence had covered one premises only, then on variation the Collector must cancel the second licence so that there is no dormant licence.
[Schedule #, Part #, item 94, subsections 39FB(1) and (2) of the Excise Act]
- 1.66 These amendments allow multiple licences to be consolidated by variation of one licence and the cancellation of the other licences. Broadly, if a storage licence and manufacturer licence are consolidated, then given the broader scope of a licence, the varied licence would be a manufacturer licence and the storage licence would be cancelled. This is because by limitation of the definition of the two licences, an entity cannot have manufacture authorised on a storage licence, whereas a manufacturer licence can cover the storage of excisable goods. Ordinarily, premises that are licensed for storage would be subject to a condition that limits the activities under the licence to storage. The amendments are broad enough to allow entities to arrange premises on licences as they prefer. That is, entities could choose to consolidate all their premises onto one licence (which would be an entity-level manufacturer licence) or have two licences by consolidating manufacturing premises on the first licence and consolidating storage premises on the second licence, or any other permutation that would be available to them within the definitions of licence types.
[Schedule xx, item 69, subsections 6C(2) and (4) of the Excise Act]

Suspension and cancellation of licences

Method of suspension

- 1.67 Section 39J dealing with the method of suspension is amended to ensure that the provisions cover suspensions under subsections 39G(1), and 39G(1A) including the new ground of suspension where a licence holder has not conducted any activities authorised by the licence at any premises covered by the licence for a period of at least 3 years. Subsection 39J(4) deals with the giving notice related to a licence suspended under 39G(1A) (which deals with particular premises covered by an entity-level licence).
- 1.68 In particular:
- the notice given to the licence holder that must state that if the licence holder wants the licence to continue to cover particular premises, the

licence holder may within 7 days after the day on which the notice was served, give to the Collector at an address specified in the notice a written statement showing cause why the premises should continue to be covered by the licence;

- the notice may state that the licence is suspended in relation to particular premises if the Collector considers it is necessary for the protection of revenue or for ensuring compliance with the Excise Act;
- the suspension takes effect on and from the service of the notice; and
- if the Collector has not varied a licence to remove a premises that was suspended, the Collector must revoke the suspension within 28 days after the day the Collector suspended the licence in relation to the premises.

[Schedule #, Part #, items 98, 103 to 107, subsections 39J(1), 39J(4A) and (4B), 39J(3), 39J(5), and paragraphs 39G(1)(o), 39J(2)(b)]

Activities that are prohibited during suspension

- 1.69 Provisions in section 39K dealing with activities that are prohibited during suspension are amended so that the provisions apply to a suspended entity-level licence or a suspended licence in relation to a particular premises.
[Schedule #, Part #, items 108, 109, 111, 113, 114 and 115, subsections 39K(1), (4), (5), (6) paragraphs 39K(1) and (b),]
- 1.70 Subsection 31K(1A) is inserted to mirror the existing 39K(1) so that during the period in which a licence is suspended under 39G(1A) (dealing with the suspension of particular premises), the licence holder must not engage in activities that are prohibited during suspension, in particular manufacture goods that are excisable or store excisable goods. The same penalty that applies under subsection 39K(1) applies to subsection 39K(1A).
[Schedule #, Part #, items 110, subsection 39K(1A)]
- 1.71 Additionally, during a period in which a licence is suspended under subsection 39G(1A), the licence holder is prohibited from manufacturing excisable goods or storing excisable goods at the premises in relation to which the licence was suspended.
[Schedule #, Part #, item 112, subsection 39K(4A)]
- 1.72 Paragraphs 39K(6)(d) and (e) are amended to ensure that during a period in which the licence is suspended, the Collector has the power to take control of premises specified in a licence and require the licence holder to remove goods to another place approved by the Collector. These amendments make it clear that the Collector has such power in relation to a licence suspension or a suspension in relation to a particular premises.
[Schedule #, Part #, item 116, paragraphs 39K(6)(d) and (e)]

Variation of licence to remove premises

- 1.73 The variation of a licence to remove premises is outlined in section 39LA. These provisions are contained in Division 4 which deals with suspensions and cancellations of licences.

- 1.74 Similar to the cancellation of a licence, the Collector may vary an entity-level licence so that the licence no longer covers particular premises where the Collector is entitled to suspend the licence in relation to those premises under subsection 39G(1A).
- 1.75 Additionally, the licence holder may request the Collector to vary the licence to no longer cover a premises. The variation must be made by way of written notice, served in a particular way on the licence holder including on any person who apparently participates in the management and control of the premises covered by the licence.
[Schedule #, Part #, item 119, subsections 39LA(1), (2) and (4) of the Excise Act]
- 1.76 Subsections 39LA(4) to (6) ensure that where a licence is varied, the Collector is to inform the owner of the excisable goods that the premises will no longer be covered by the licence. The Collector may direct the owner to pay duty payable in respect of the goods, remove the goods at the premises to another place and that the owner must comply with the notice, otherwise the goods may be sold or otherwise disposed of.
[Schedule #, Part #, item 119, subsections 39LA(5) to (6) of the Excise Act]
- 1.77 If a licence has been varied to no longer cover a premises, Subsection 39M(2) imposes a penalty where a person, without permission, removes from the premises any underbond goods if the person knew or was reckless as to whether the goods were underbond goods.
[Schedule #, Part #, item 124, subsection 29M(2) of the Excise Act]
- 1.78 Subsection 39N(1A) allows the Collector, when a licence has been varied, to cause any excisable goods on which duty has not been paid that are at the formerly covered premises, to be removed to such other place as the Collector thinks fit. This is in addition to such a power if a licence has been cancelled under 39N(1).
[Schedule #, Part #, items 131 and 132, subsection 39N(1A) and section 39N2 of the Excise Act]

Entity-level licences—EEG warehouse licences under the Customs Act

- 1.79 A key change to the customs warehouse licensing regime is allowing an entity to apply for an entity-level EEG warehouse licence, that is, an EEG warehouse licence to cover more than one warehouse. This is a change from the current situation which only permits one warehouse per licence. The authorisation to store EEGs at a warehouse remains at the discretion of the Comptroller-General.
- 1.80 Similar to amendments to the Excise Act mentioned at paragraph 1.53, amendments have been made to the Customs Act so that where provisions referred to ‘a warehouse to which the licence relates’ this has been changed to ‘a warehouse covered by the licence’.
[Schedule #, Part #, items 50 to 59, sections 88 and 90, subsections 99(3) and 101(1), subparagraphs 105B(1)(d)(i) and (ii), 105C(1)(d)(i) and (ii), and paragraphs 105E(a) and (b) of the Customs Act]

Application for an entity-level EEG warehouse licence

1.81 The Comptroller-General may grant an EEG warehouse licence to cover one or more warehouses. However other warehouse licences (including duty free stores, providores and catering bonds) under the Customs Act will still only cover one warehouse.

[Schedule #, Part 3, item 3 and 4, subsections 79(1) to (3) of the Customs Act]

1.82 The information that is required in the application is outlined in subsection 80(1A). Contrary to the operation of the Excise Act mentioned at paragraph 1.54, subsection 80(1A) requires an application to specify the kinds of goods that would be warehoused in each place proposed to be covered by the EEG warehouse licence. Except for the exclusion of warehouse licence application charges to EEG warehouse licences, the application criteria for all warehouse licences remain the same.

[Schedule #, Part 3, items 5 and 11, subsections 79(1A), 80(1A), and 81A(3) of the Customs Act]

1.83 The provisions related to what goods a licence may authorise have not changed. However, an EEG warehouse licence must authorise the warehousing of EEGs and may also authorise the warehousing of “non-EEGs”, i.e. imported goods that are not EEGs, and particular activities related to those goods. For clarity, if a warehouse is not authorised to warehouse EEGs it cannot be covered by an ‘entity-level’ EEG warehouse licence.

[Schedule #, Part 3, item 4, subsection 79(3) of the Customs Act]

Requirements for and grant of EEG warehouse licence

1.84 The applicant must provide the relevant information to enable the Comptroller-General to make an assessment as to whether the applicant or any persons who would participate in the management or control of a warehouse are fit and proper persons or whether the place in relation to which the licence is sought is suitable and satisfy the requirements.

[Schedule #, Part #, items 6 to 9, paragraphs 81(1)(c), (d), (e), (f), (g) of the Customs Act]

1.85 Where the application is for a licence to cover more than one warehouse, the relevant considerations are contained in subsection 81(1A) of the Customs Act. This provision allows the considerations of the criteria in relation to a particular warehouse, that is, the security and adequacy of a particular warehouse and the persons who participate in the management and control of that particular warehouse.

[Schedule #, Part #, item 10, subsection 81(1A) of the Customs Act]

Variation of EEG warehouse licence to add or remove warehouses

1.86 Part V of the Customs Act contains an existing power to vary the place covered by a warehouse licence. To allow the variation of an EEG warehouse licence to cover more than one place, subsection 81B(1) is amended to allow the Comptroller-General to vary an EEG warehouse licence in writing so that it covers an additional place or no longer covers a place. A variation cannot

occur where the variation would result in the licence not covering a place. In that situation, the licence holder can request the cancellation of the licence or the licence may be cancelled by the Comptroller-General. Conversely, where the Comptroller-General varies a licence so that it covers an additional place, and the licence that formerly covered that place no longer covers the Comptroller-General can cancel the second licence.

[Schedule #, Part #, items 12, 14 and 18, subsections 81B(1), 81B(2A) and 81B(5A) of the Customs Act]

- 1.87 In considering whether to grant the variation of an EEG warehouse licence, the Comptroller-General must have regard to those grounds in subsections 81B(4) and 81B(5) including, but not limited to, the physical security of any place added to the licence or any place that would have an altered description, including where a warehouse is to be removed from one licence and added to another.

[Schedule #, Part #, item 16, paragraph 81B(4)(a) of the Customs Act]

- 1.88 These amendments allow the Comptroller-General to ensure that an EEG warehouse licence is not varied to include places in relation to which the licence holder would not be able to ensure compliance with the Customs Act, by providing the discretion to refuse to vary an EEG warehouse licence in such circumstances.

[Schedule #, Part #, item 17, subsection 81B(5) of the Customs Act]

- 1.89 The power to impose conditions applies to any or all of the warehouses covered by an EEG warehouse licence including conditions in relation to specifying the person or classes of persons whose goods may be warehoused or limiting the operations that may be performed upon or in relation to the goods in the warehouse.

[Schedule #, Part #, items 19 and 20, subsections 82(1) and (2), and paragraphs 82(4)(a) and (b) of the Customs Act]

Suspension and cancellation of an EEG warehouse licence

- 1.90 The Comptroller-General will have the power to suspend or cancel an EEG warehouse licence in its entirety, subject to certain criteria, or be able to suspend or vary the licence to not cover a particular warehouse. These amendments ensure the suspension and cancellation provisions operate as intended in relation to an entity-level licence as a whole or a particular warehouse if the licence covers more than one warehouse.

Suspension of an EEG warehouse licence

- 1.91 The existing provisions in subsection 86(1) are amended to make it clear that those provisions relate only to warehouse licences that cover only one warehouse. Additionally, subsection 86(1) is amended to make the language gender neutral by referring to the Comptroller-General providing the relevant notice. The amendments change ‘notice’ in subsection 86(1) to ‘licence suspension notice’. This is to distinguish that notice from a ‘warehouse suspension notice’ which is further explained below. However, the ‘licence suspension notice’ and ‘warehouse suspension notice’ function as the

Comptroller-General's notice to the licence holder that they intend to cancel the licence because of relevant factors in subsection 86(1) and 86(1AA), and in either notice, the Comptroller-General may also suspend the licence or the licence in relation to the particular warehouse. The current function and intention of section 86 has not changed.

[Schedule #, Part #, items 27 to 32, 34 and 35, subsection 86(1), paragraphs 86(1)(a), (b), (e), (f), (g) and 86(1AA)(a), (b), (c), (d), (e) and (f) of the Customs Act]

- 1.92 A new ground to issue a notice of intention to cancel that allows for the suspension of an EEG warehouse licences is also included. To ensure that dormant EEG warehouse licences do not remain in the system, where the licence holder has not, for a period of at least 3 years, warehoused EEGs authorised by the licence in relation to any warehouse covered by the licence, paragraph 86(1)(i) empowers the Comptroller-General to issue a notice of intention to cancel and suspend the licence either through a license suspension notice or a warehouse suspension notice. This ground of suspension and cancellation does not apply to other types of warehouse licences.

[Schedule #, Part #, items 33 and 34, paragraph 86(1)(i) and paragraph 86(1AA)(f) of the Customs Act]

- 1.93 Another ground is included that empowers the issue of a notice of intention to cancel and allows the suspension of an EEG warehouse licence in relation to a particular warehouse (a 'warehouse suspension notice'), as distinguished from the suspension of the actual EEG warehouse licence itself (that is, a 'licence suspension notice'). This ground of suspension and cancellation allows the Comptroller-General to suspend and cancel an EEG warehouse licence in relation to a particular warehouse where:

- the physical security of the warehouse is no longer adequate; or
- the plant and equipment used in the warehouse are such that the protection of the revenue in relation to goods in the warehouse is inadequate; or
- a director, officer or shareholder of the company who participates in the management or control of the warehouse is not a fit and proper person to participate; or
- an employee who participates in the management or control of the warehouse is not a fit and proper person to participate; or
- a condition of the licence has not been complied with; or
- the licence holder has not, for a period of at least 3 years, conducted any activities authorised by the licence at the warehouse.

[Schedule #, Part #, items 33 and 34, paragraph 86(1)(h) and subsection 86(1AA) of the Customs Act]

- 1.94 These amendments make it clear that the consideration of whether a person is a fit and proper person applies to paragraphs 86(1AA)(c) and (d).

[Schedule 3, Part #, item 35, paragraphs 86(1A)(f) of the Customs Act]

1.95 Subsection 86(4) has been inserted to replicate subsection 86(3) so that it applies to warehouse suspension notices in relation to licences that cover more than one warehouse and allows the licence holder to show cause within 7 days after the notice was served as to why a warehouse should continue to be covered by the licence. Additionally, it makes clear that the Comptroller-General will state that the licence is suspended in relation to the warehouse if the Comptroller-General has formed the view that suspension is necessary for the protection of the revenue or ensuring compliance with the Customs acts or other laws. If the notice includes the suspension of the licence in relation to the warehouse, the licence is to be suspended in relation to the warehouse on and from the service of the notice.

[Schedule #, Part #, items 36 and 37, subsections 86(3) and (4) of the Customs Act]

1.96 Amendments make it clear that where an EEG warehouse licence is suspended in relation to a warehouse under subsection 86(4) (dealing with ‘warehouse licence notice’):

- the Comptroller-General may, at any time, revoke the suspension and, if the licence in respect of the warehouse has not been cancelled within 28 days after the day the licence was suspended, revoke the suspension (subsection 86(5));
- a person must not use the warehouse with the intention of warehousing goods (subsection 86(6)); and
- the Comptroller-General may direct or provide permission in how goods are placed, removed, processed in the warehouse or the Comptroller-General may take control of the warehouse or require a person to pay to the Commonwealth in respect of the services of officers required as a result of the suspension (subsection 86(7)).

[Schedule #, Part #, items 38 and 39, subsection 86(5), (6), and (7)]

Cancellation of an EEG warehouse licence

1.97 Broadly, an EEG warehouse licence can be cancelled. However, because an EEG warehouse licence can cover more than one warehouse, these amendments ensure that a warehouse can also be removed by variation of the licence. This follows on from the situation where an EEG warehouse licence has been suspended, either the licence itself by a ‘licence suspension notice’ or the licence in relation to a particular warehouse by a ‘warehouse suspension notice’.

1.98 The Comptroller-General may cancel an EEG warehouse licence if:

- satisfied in relation to the licence as to any of the matters mentioned in paragraphs 86(1)(a)-(j) (paragraph 87(1)(a)); or
- as a result of a variation or request to vary the licence, it no longer covers a warehouse (paragraph 87(1)(b)); or

- satisfied that the cancellation is necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Act or any other law prescribed by the regulations (paragraph 87(1)(c)).

[Schedule #, Part #, item 40, subsection 87(1) of the Customs Act]

1.99 Amendments are made to ensure that the cancellation notice of an EEG warehouse licence covering multiple warehouses is communicated widely to allow the owners of the goods to deal with them as directed. The Comptroller-General must publish the notice in a newspaper or newspapers circulating in each locality in which a place that was a warehouse covered by the licence is situated. This is to inform the owners of goods in the place that was a former warehouse that:

- they must pay to the Collector duty payable in respect of their goods in the warehouse; or
- they must remove their goods in the warehouse to another place in accordance with a permission obtained from the Collector; and
- if they do not comply with the requirements of the notice, their goods will be sold.

[Schedule #, Part #, items 42 to 46, subsection 87(4), paragraph 87(4)(c), (e) and subparagraphs 87(4)(d)(i) and (ii) of the Customs Act]

1.100 Where the Comptroller-General is satisfied that all the goods in a former warehouse are the property of the former licence holder, then in respect of that former licence, the Comptroller-General is not required to publish the notice under subsection 87(4) of the Customs Act. However, given that an EEG warehouse licence may cover more than one warehouse, the Comptroller-General has to assess each warehouse in respect of a former licence and determine whether goods in each of the warehouses are the property of the former licence holder. For completeness, this means that there may be situations where the Comptroller-General must publish a notice in accordance with subsection 87(4) in respect of some warehouses but not other warehouses of a former licence holder.

[Schedule #, Part #, items 47 and 48, subsections 87(5) and (6) of the Customs Act]

Variation of EEG warehouse licence to remove a warehouse

1.101 The Comptroller-General has the power to cancel an EEG warehouse licence. However, to deal with specific warehouses that do not comply with the requirement of the Customs Act or where the licence holder no longer wishes the licence to cover that warehouse, the Comptroller-General has the power to vary an EEG warehouse licence where it covers more than one warehouse.

[Schedule #, Part #, item 49, section 87B of the Customs Act]

1.102 The Comptroller-General can vary an EEG warehouse licence that covers multiple warehouses so that the licence no longer covers a particular warehouse, that is, remove a warehouse from coverage of a licence, if the

Comptroller is satisfied as to any of the matters in paragraphs 86(1AA)(a) to (f) related to the ‘warehouse suspension notice’. Additionally, the Comptroller-General must vary an EEG warehouse licence to remove or revoke a particular warehouse from coverage of the licence if requested by the licence holder in writing.

[Schedule #, Part #, item 49, subsections 87B(1) and (2) of the Customs Act]

- 1.103 For the avoidance of doubt, the Comptroller-General retains the discretion to suspend an EEG warehouse licence that covers multiple places in situations where only one or multiple places are not compliant. To manage integrity risks and compliance, the Comptroller-General can either vary the licence so it does not cover the particular warehouse or suspend the EEG warehouse licence itself.

[Schedule #, Part #, item 33, paragraph 86(1)(j) of the Customs Act]

- 1.104 However, where a variation would result in the EEG warehouse licence not covering any warehouses, the Comptroller-General cannot vary the licence. Instead, it is intended that the licence would be cancelled.

[Schedule #, Part #, item 49, subsection 87B(3) of the Customs Act]

- 1.105 If the Comptroller-General varies the licence under subsection 87B(1), written notice must be served either personally or by post on the licence holder or served personally on a person who, at the time of the service, apparently participates in the management or control of one or more warehouses covered by the licence. To facilitate service where there are multiple warehouses, this provision allows service to a person who participates in management and control of a warehouse provided the variation relates to that particular warehouse.

[Schedule #, Part #, item 49, subsection 87B(4) of the Customs Act]

- 1.106 Similar to a cancellation of a licence, these amendments:

- require the Comptroller-General to publish a notice in the relevant forums informing the owners of goods in each place that is no longer a warehouse as a result of the variation.
- permit the Comptroller-General to disregard the obligation to publish provided that the Comptroller-General is satisfied that all the goods in a formerly licensed warehouse are the property of the licence holder. In that situation, the Comptroller-General must ensure that the notice is served personally, by post or on a person who at the time of the variation, apparently participated in the management or control of the former warehouse. The Comptroller-General must assess the goods in each warehouse that may no longer be covered as a result of the variation to ensure that it is permissible to dispense with the obligation to otherwise publish the notice.

[Schedule #, Part #, items 49, subsections 87B(5) and (6) of the Customs Act]

- 1.107 Where the owner of goods to which the variation notice applies fails to comply with the requirements of the notice within the time specified in the notice, the goods may be sold by the Collector. This makes clear what happens to goods

when a warehouse is no longer covered by variation and the directions of the Comptroller-General are not complied with.

[Schedule #, Part #, item 49, subsection 87B(7) of the Customs Act]

Movement permissions

Permission to remove excisable goods from and to licensed places

- 1.108 On granting an entity-level licence, or on the variation of a licence to cover more than one premises, the Collector must give permission in writing to the licence holder to remove goods that are subject to the CEO's control from premises covered by the licence to other premises covered by that licence or another licence that authorises goods of that kind to be kept at the other premises. This permission is ongoing until revoked in writing.
[Schedule #, Part 4, items 158 to 162, subsections 61A(1A), (1B), (1C), (2AA), (2C) and (3) of the Excise Act]
- 1.109 It is the policy intention that goods should be able to be removed from and to any licensed premises that is authorised for those goods, or goods of that kind. There is no requirement that the premises be covered by a licence held by the same licence holder, however, goods cannot be removed from premises to another premises where the licence for those latter premises is for the manufacture or storage of goods of a different kind. For example, goods should only be able to be removed from and sent to premises covered by a licence that allows the storage of those goods, if the goods are of one or more of the kinds specified in the licence for the premises to which they are being removed.
- 1.110 The default granting of movement permissions that allow movement of goods underbond between licensed entities and sites, including to licensed sites of other entities, is not intended to impact the capacity to revoke or to impose conditions on such movement permissions (for example where a risk to revenue is identified).
- 1.111 Where a movement permission granted under subsection 61A(1A) is revoked in writing, the Collector may grant a movement permission to an entity under subsection 61A(1).
- 1.112 The power in subsection 61A(1A) is exercisable by the Collector when granting an entity-level licence or a variation for a licence to cover more than one premises. Additionally, the Collector has the discretion provide this movement permission to an existing licence holder that has an entity-level licence. This is intended to allow for greater flexibility in providing movement permission to entity-level licensees. This movement permission cannot be granted for other licences, that is, one licence for one premises.
- 1.113 To avoid doubt, the movement permissions under section 61A(3) (goods for exportation) are not intended to be covered by subsection 61A(1A). The policy is directed at underbond movement of goods between licensed premises, and not related to the exportation of goods. Any movement permissions to a place of export are covered by the existing provisions in subsections 61A(2A) and 61A(2B) of the Excise Act.

Permission to remove EEGs from and to specified places

- 1.114 The policy intention is for movement of EEGs between licensed warehouses and this includes any warehouse that is licensed to warehouse EEGs even if it warehouses other imported goods that are not EEGs, that is, mixed goods.
- 1.115 On the granting of an EEG warehouse licence or on the variation of an EEG warehouse licence to cover more than one premises, the Comptroller-General must give permission in writing to the licence holder to remove goods that are subject to customs control from any warehouse covered by the licence to another warehouse covered by that or another EEG warehouse licence that authorises goods of that kind to be kept at the other premises. This permission is ongoing until revoked in writing.
[Schedule #, Part 4, items 151 to 155, section 71E (heading), subsections 71E(1), 71E(3), 71E(3AA) and 71E(3AC) and (3AD) of the Customs Act]
- 1.116 The movement permission is not limited to EEGs being moved between warehouses specified in the same licence. However, EEGs cannot be removed from and sent to warehouses where the licence for those places is not for the warehousing of EEGs. Similarly, goods that are not EEGs are excluded from the movement permission.
- 1.117 The current ability to impose conditions, including conditions dealing with movement of EEGs will be retained. This will enable any integrity risks associated with a licence holder or a particular place to be addressed.

Establishing the Excise and Excise-Equivalent Warehouse Licences Register

- 1.118 The Bill provides for the establishment of a public register: the Excise and Excise-Equivalent Warehouse Licences Register. The public register contains information relating to entities who hold a storage licence, a manufacturer licence, or an EEG warehouse licence. The intention of publicising this information is to provide businesses with a simple way of viewing current licensing information reducing administrative burden by avoiding unnecessary interactions with the ATO and the ABF.
[Schedule xx, Part 5, item 166, subsection 4(1) of the Excise Act]
- 1.119 In respect of each storage licence, manufacturer licence, and EEG warehouse licence, the CEO must publish the following information on the public register:
- name of the licence holder (who could be an individual);
 - the licence holder's ABN (if any);
 - the name of the Act under which the licence was granted;
 - any additional information that is prescribed by regulations.
- [Schedule #, Part 5, item 167, subsection 40(3) of the Excise Act]***
- 1.120 The CEO has an obligation to establish and maintain the public register and to publish the information referred to in paragraph 1.119. The CEO will take

reasonable steps to ensure this information is accurate and up-to-date. The public register will be on a public website maintained by the ATO.

[Schedule #, Part 5, items 167 and 168, subsections 40(1), (2), (4), and (5) of the Excise Act]

- 1.121 An officer of Customs may disclose information related to EEG warehouse licences to the ATO for the purpose of enabling the CEO to perform the function of maintaining the public register. To avoid doubt, a note is inserted to subsection 355-50(1) in Schedule 1 to the *Taxation Administration Act 1953* to make clear that a disclosure for the purposes of this register is a disclosure in performing duties such that taxation officers are not committing an offence of making records or disclosing information that is protected information.
[Schedule xx, Part 5, item 165 and 168, section 102AB of the Customs Act and subsection 355-50(1) in Schedule 1 (note 2) of the Taxation Administration Act 1953]
- 1.122 Where the CEO may issue a document containing the details of a matter taken from the public register, this document is admissible in any proceedings as prima facie evidence of the matter.
[Schedule #, Part 5, item 167, subsections 41(1) and (2) of the Excise Act]
- 1.123 The register is not a legislative instrument for the purposes of the *Legislation Act 2003*. This is not intended to prescribe a substantive exemption from the requirements of the *Legislation Act 2003*, however, it is intended to be declaratory of the law.
[Schedule #, Part 5, item 167, subsection 40(6)]

Excise Tariff Act—removing licence requirement for onshore producers of crude oil and condensate below threshold

- 1.124 The Bill also includes amendments to the Excise Tariff Act to align the treatment of onshore producers of stabilised crude petroleum oil and condensate with offshore producers of stabilised crude petroleum oil and condensate.
- 1.125 From 1 July 2024, onshore producers of stabilised crude petroleum oil and condensate will not have to hold a licence under the Excise Act (for the purpose of producing stabilised crude petroleum oil and condensate) if the particular field has cumulatively produced less than the threshold of 4767.3 megalitres of stabilised crude petroleum oil and condensate.
- 1.126 These amendments exempt producers of stabilised crude petroleum oil and condensate from excise duty liability when production in the particular field is below the cumulative threshold of 4767.3 megalitres of stabilised crude petroleum oil and condensate. This means that the requirement to have a licence under the Excise Act would not be applicable.
- 1.127 From 1 July 2024, any licences in force for onshore production of stabilised crude petroleum oil and condensate, where the onshore field has produced less than the cumulative threshold, can be cancelled at the written request of the licence holder.

[Schedule #, items 169 to 175, subsection 3(1), table subitems 20.3, 21.2 in the Schedule to the Excise Tariff Act 1921]

Consequential amendments

- 1.128 This Bill makes a number of consequential amendments to give effect to the policy and to improve the readability of the Acts to cater for these amendments.
- 1.129 Some provisions of the Acts have been amended to remove gendered language. The amendments do not have substantive effect.
[Schedule #, Part #, items 15 and 135 to 139, subsection 81B(4) of the Customs Act and sections 52 and 53 and subsection 76(1) of the Excise Act]
- 1.130 The note to subsection 39M(1) of the Excise Act has been omitted as it is inconsistent with modern drafting practices to include notes after penalties.
[Schedule #, Part #, item 123, subsection 39M(1)(note)]
- 1.131 Section 61B of the Excise Act is repealed as it was a redundant provision since the introduction of the storage licence into the framework.
[Schedule #, Part #, item 164, section 61B]
- 1.132 Because the amendments introduce an ongoing licence, a number of references in the Excise Act to “expire” have been substituted with “ceases to be in force” to ensure the provision works as intended. Throughout the Excise Act where ‘cancelled’ is used, this has been retained where appropriate because a licence under Excise Act, ongoing or otherwise, can be cancelled, however, ongoing licences that do not need to be renewed do not necessarily ‘expire’.
[Schedule #, Part #, items 120 and 121, 128, 129, 141 to 145 sections 39M (heading), 39N (heading) 77E, and 77F (heading), subsections 39M(1), 39N(1), 77F(1) and (3)]

Commencement, application, and transitional provisions

- 1.133 The Bill commences on 1 July 2024. The amendments contained in the Bill also take effect from 1 July 2024.
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