



Customs Legislation Amendment (Controlled Trials and Other Measures) Act 2023

No. 66, 2023

**An Act to amend the law relating to customs, and
for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Customs Legislation Amendment (Controlled Trials and Other Measures) Act 2023

No. 66, 2023

An Act to amend the law relating to customs, and for related purposes

[Assented to 14 September 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Customs Legislation Amendment (Controlled Trials and Other Measures) Act 2023*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	14 September 2023
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2	The day after this Act receives the Royal Assent.	15 September 2023

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Note: The provisions of the *Customs Regulation 2015* amended by this Act, and any other provisions of that instrument, may be amended or

repealed by regulations made under section 270 of the *Customs Act 1901* (see subsection 13(5) of the *Legislation Act 2003*).

No. 66, 2023

Customs Legislation Amendment (Controlled Trials and Other Measures) Act 2023

3

Schedule 1—Main amendments

Australian Border Force Act 2015

1 Subsection 54(1)

After “section 179”, insert “, 179K or 179L”.

Customs Act 1901

2 Subsection 4(1)

Insert:

controlled trial means a controlled trial established by rules made under subsection 179L(1).

controlled trial provision means the following:

- (a) Part IV (importation of goods), other than Division 1 of that Part;
- (b) Part IVA (depots);
- (c) Part V (warehouses);
- (d) Part VI (exportation of goods), other than Division 1 of that Part;
- (e) Part VIA (electronic communications);
- (f) Part XI (agents and customs brokers);
- (g) Part XVA (tariff concession orders);
- (h) regulations made for the purposes of a provision covered by paragraph (a), (b), (c), (d), (e), (f) or (g).

3 Subsection 4(1) (definition of *rules*)

Repeal the definition, substitute:

rules:

- (a) in relation to Part XA, means rules made under section 179;
and
- (b) in relation to Part XB, means rules made under section 179L.

4 After Part XA

Insert:

Part XB—Controlled trials

Division 1—Preliminary

179A Simplified outline of this Part

The Comptroller-General of Customs may establish controlled trials. A controlled trial is for a period of up to 12 months, with a possible one-off extension of up to 6 months.

Entities may apply or be invited to participate in a controlled trial.

Entities participating in a controlled trial:

- (a) may be released from certain obligations under this Act;
or
- (b) may be required to satisfy certain obligations under this Act in a different way to that required by this Act; or
- (c) may be required to comply with additional obligations;
or
- (d) may receive benefits of a certain kind.

179B Application of this Part

This Part applies in relation to the following entities:

- (a) individuals;
- (b) bodies corporate;
- (c) partnerships.

Division 2—Obligations and benefits under controlled trials

179C Obligations under controlled trials

Entities released from obligations

- (1) If an entity holds an approval, that is in force, to participate in a controlled trial, the entity is released from an obligation that the entity would otherwise be required to satisfy under a controlled trial provision if the obligation is specified in the rules as an obligation in relation to that trial that entities are released from.

Note 1: Section 179L provides for the making of rules to establish a controlled trial. Division 3 deals with approving an entity's participation in a controlled trial.

Note 2: For **controlled trial provision**, see subsection 4(1).

Entities must satisfy obligations in a different way

- (2) If an entity holds an approval, that is in force, to participate in a controlled trial, the entity cannot satisfy an obligation under a controlled trial provision in the way required by this Act if the obligation is specified in the rules as an obligation in relation to that trial that entities cannot satisfy in the way required by this Act.
- (3) Instead, the entity must satisfy the obligation in the way specified in the rules in relation to that trial.

Note: A failure to satisfy the obligation in this way is a ground for varying, suspending or revoking the entity's approval: see section 179J.

Entities must comply with additional obligations

- (4) If an entity holds an approval, that is in force, to participate in a controlled trial, the entity must comply with each obligation specified in the rules as an obligation in relation to that trial that entities must comply with.

Note 1: The obligation must be in relation to a controlled trial provision: see paragraph 179L(3)(h).

Note 2: A failure to comply with the obligation is a ground for varying, suspending or revoking the entity's approval: see section 179J.

179D Benefits under controlled trials

If an entity holds an approval, that is in force, to participate in a controlled trial, the entity may receive benefits of a kind that are specified in the rules in relation to the trial.

Division 3—Participation in controlled trials**179E Approval of participation in controlled trials**

- (1) The Comptroller-General of Customs may, in writing, approve an entity's participation in a controlled trial if:
 - (a) either:
 - (i) the entity makes an application to participate in that trial in accordance with section 179F; or
 - (ii) the Comptroller-General of Customs invites, in writing, the entity to participate in that trial and the entity makes an election to participate in that trial in accordance with section 179G; and
 - (b) the Comptroller-General of Customs is satisfied that the entity meets the qualification criteria (if any) determined in an instrument under section 179K; and
 - (c) the Comptroller-General of Customs is satisfied that the entity meets the eligibility criteria (if any) specified in the rules in relation to that trial.

Note: Section 179F deals with making applications and section 179G deals with making elections.

- (2) In deciding whether to approve an entity's participation in a controlled trial, the Comptroller-General of Customs must consider:
 - (a) any matter specified in the rules under paragraph 179L(3)(b) in relation to that trial; and
 - (b) any other matter that the Comptroller-General of Customs considers relevant.

Period for which approval is in force

- (3) An approval under subsection (1) must specify the period for which it is in force.

Note: See section 179J for variation, suspension or revocation of an approval.

Copy of approval to be given to entity

- (4) The Comptroller-General of Customs must give a copy of an approval under subsection (1) to the entity.

Notification of refusal to approve entity's participation in controlled trial

- (5) If an entity makes an application or election to participate in a controlled trial and the Comptroller-General of Customs refuses to approve the entity's participation in the trial, the Comptroller-General of Customs must notify the entity of the refusal and of the reasons for the refusal.

Approval not a legislative instrument

- (6) An approval under subsection (1) is not a legislative instrument.

179F Application to participate in controlled trial

- (1) An application to participate in a controlled trial may be made by document or electronically.

Documentary application

- (2) A documentary application must:
- (a) be communicated to the Comptroller-General of Customs; and
 - (b) be in an approved form; and
 - (c) contain the information required by the approved form; and
 - (d) be signed in a manner indicated by the approved form.

Electronic application

- (3) An electronic application must:
- (a) be communicated to the Comptroller-General of Customs; and
 - (b) communicate such information as is set out in an approved statement.
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179G Election to participate in controlled trial

- (1) An election to participate in a controlled trial may be made by document or electronically.

Documentary election

- (2) A documentary election must:
- (a) be communicated to the Comptroller-General of Customs; and
 - (b) be in an approved form; and
 - (c) contain the information required by the approved form; and
 - (d) be signed in a manner indicated by the approved form.

Electronic election

- (3) An electronic election must:
- (a) be communicated to the Comptroller-General of Customs; and
 - (b) communicate such information as is set out in an approved statement.

179H Conditions of approvals

An entity's approval under section 179E in relation to a controlled trial is subject to the conditions specified in the rules in relation to that trial.

179J Variation, suspension or revocation of approvals

- (1) The Comptroller-General of Customs may, in writing, vary, suspend or revoke an entity's approval under section 179E in relation to a controlled trial if the Comptroller-General of Customs is satisfied that:
- (a) the entity no longer meets the qualification criteria (if any) determined in an instrument under section 179K; or
 - (b) the entity no longer meets the eligibility criteria (if any) specified in the rules in relation to that trial; or
 - (c) the entity has not complied, or is not complying, with any condition specified in the rules in relation to that trial; or

- (d) in relation to that trial, the entity has not satisfied an obligation covered by subsection 179C(2) in the way covered by subsection 179C(3); or
 - (e) in relation to that trial, the entity has not complied with an obligation covered by subsection 179C(4).
- (2) In deciding whether to vary, suspend or revoke an approval, the Comptroller-General of Customs must consider:
 - (a) any matter specified in the rules under paragraph 179L(3)(d) in relation to that trial; and
 - (b) any other matter that the Comptroller-General of Customs considers relevant.
 - (3) A variation, suspension or revocation of an approval must be in accordance with the procedures specified in the rules in relation to that trial.
 - (4) The Comptroller-General of Customs must give notice of a variation, suspension or revocation to the entity.
 - (5) The notice must specify the day the variation, suspension or revocation takes effect (which must be at least 7 days after the day the notice is given).

Consequences of suspension

- (6) An approval has no effect while suspended, but the period for which it remains in force continues to run despite the suspension.
- (7) The Comptroller-General of Customs may, in writing, revoke a suspension under subsection (1).
- (8) The Comptroller-General of Customs must give notice of the revocation of the suspension to the entity. The notice must specify the day the revocation takes effect.
- (9) The Comptroller-General of Customs may, under subsection (1), vary or revoke an approval while it is suspended.

Division 4—Instruments**179K General qualification criteria for any controlled trial**

The Comptroller-General of Customs may, by legislative instrument, determine qualification criteria that entities must meet in order to participate in any controlled trial.

179L Rules specific to a controlled trial

- (1) The Comptroller-General of Customs may, by legislative instrument, make rules that make provision for and in relation to the following:
 - (a) establishing a controlled trial;
 - (b) the period of operation of a controlled trial;
 - (c) extending the period of operation of a controlled trial;
 - (d) revoking a controlled trial.
- (2) For the purposes of subsection (1):
 - (a) rules that establish a controlled trial must specify the purpose of the controlled trial; and
 - (b) the period of operation of a controlled trial must not be more than 12 months; and
 - (c) the period of operation of a controlled trial may begin after the day on which the controlled trial is established; and
 - (d) an extension of the period of operation of a controlled trial must not be more than 6 months; and
 - (e) the period of operation of a controlled trial must not be extended more than once.
- (3) The Comptroller-General of Customs may, by legislative instrument, make rules that make provision for and in relation to the following for a controlled trial:
 - (a) the eligibility criteria that an entity must meet in order for the Comptroller-General of Customs to approve an entity's participation in that trial;
 - (b) the matters that the Comptroller-General of Customs must consider in deciding whether to approve an entity's participation in that trial;

- (c) the conditions that approvals under section 179E in relation to that trial are subject to;
- (d) the matters that the Comptroller-General of Customs must consider when deciding whether to vary, suspend or revoke an approval under section 179E in relation to that trial;
- (e) the procedures that the Comptroller-General of Customs must follow when varying, suspending or revoking an approval under section 179E in relation to that trial;
- (f) each obligation under a controlled trial provision that, in relation to that trial, entities holding an approval, that is in force, to participate in that trial are released from;
- (g) the following:
 - (i) each obligation under a controlled trial provision that, in relation to that trial, entities holding an approval, that is in force, to participate in that trial cannot satisfy in the way required by this Act;
 - (ii) the way in which those entities must satisfy that obligation;
- (h) each obligation that, in relation to that trial, entities holding an approval, that is in force, to participate in that trial must comply with, being an obligation that is in relation to a controlled trial provision;
- (i) the kind of benefits that entities holding an approval, that is in force, to participate in that trial may receive and any criteria to be satisfied for entities to receive those benefits;
- (j) a matter that is incidental or ancillary to a matter covered by paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (i).

Note: For *controlled trial provision*, see subsection 4(1).

- (4) To avoid doubt, rules made under this section may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

Schedule 2—Other amendments

Customs Act 1901

1 Subsections 4(3C) and (3D)

Omit “Schedule 5 or 6”, substitute “a later Schedule”.

2 Paragraph 183Q(a)

Omit “183P(b) or (c)”, substitute “183P(1)(b) or (c)”.

3 Subsection 226(2)

Omit “a notice under section 273EA”, substitute “an instrument made under section 273EA”.

4 Paragraph 226(2)(a)

Omit “publication of the notice” (wherever occurring), substitute “registration of the instrument under the *Legislation Act 2003*”.

5 Subsection 273EA(1)

Omit “publish in the *Gazette* a notice”, substitute “make a legislative instrument giving notice”.

6 Subsection 273EA(1)

Omit “the publication of the notice”, substitute “the registration of the instrument under the *Legislation Act 2003*”.

7 Subsection 273EA(1)

Omit “specified in the notice and operating as from such time as is specified in the notice”, substitute “specified in the instrument and operating at and after the time specified in the instrument”.

8 Paragraphs 273EA(1)(a) and (b)

Omit “publication of the notice”, substitute “registration of the instrument under the *Legislation Act 2003*”.

9 Subsection 273EA(2)

Omit “published”, substitute “given”.

10 At the end of section 273EA

Add:

- (3) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument made under subsection (1) of this section.

Customs Regulation 2015

11 Subsection 109(2) (table item 6, column headed “Circumstance”)

Omit “the publication of a notice under subsection 273EA(1) of the Act”, substitute “the making of an instrument under subsection 273EA(1) of the Act giving notice”.

12 Clause 1 of Schedule 6 (table item 9, column headed “Circumstances”)

Omit “the publication of a notice, under subsection 273EA(1) of the Act,”, substitute “the making of an instrument under subsection 273EA(1) of the Act giving notice”.

Customs Tariff Act 1995

13 Subsection 3(1) (paragraph (b) of the definition of *Tariff instrument*)

Omit “a Notice published”, substitute “an instrument made”.

14 Subsection 3(1) (paragraph (b) of the definition of *Tariff instrument*)

Omit “in accordance with”, substitute “under”.

15 Saving provision

The *Customs Act 1901* and the *Customs Tariff Act 1995*, and regulations under those Acts, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to a notice referred to in section 273EA of the *Customs Act 1901* (as in force at any time before that commencement) that was published, or registered as a legislative instrument under the *Legislation Act 2003*, before that commencement.

[*Minister's second reading speech made in—
House of Representatives on 30 November 2022
Senate on 9 February 2023*]

(130/22)
