

EXPOSURE DRAFT

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Customs Amendment (Controlled Trials) Bill 2021

No. , 2021

(Home Affairs)

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**A Bill for an Act to amend the *Customs Act 1901*,
and for related purposes**

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1 **A Bill for an Act to amend the *Customs Act 1901*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Customs Amendment (Controlled Trials) Act 2021*.

6 **2 Commencement**

7 (1) Each provision of this Act specified in column 1 of the table
8 commences, or is taken to have commenced, in accordance with
9 column 2 of the table. Any other statement in column 2 has effect
10 according to its terms.
11

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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.	
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.	

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

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

7 **3 Schedules**

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9 repealed as set out in the applicable items in the Schedule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

1 **Schedule 1—Amendments**
2

3 *Australian Border Force Act 2015*

4 **1 Subsection 54(1)**

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

6 *Customs Act 1901*

7 **2 Subsection 4(1)**

8 Insert:

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

11 *controlled trial provision* means the following:

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

23 **3 Subsection 4(1) (definition of *rules*)**

24 Repeal the definition, substitute:

25 *rules*:

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

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Schedule 1 Amendments

1 **4 After Part XA**

2 Insert:

3 **Part XB—Controlled trials**

4 **Division 1—Preliminary**

5 **179A Simplified outline of this Part**

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

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

10 Entities participating in a controlled trial:

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

18 **179B Application of this Part**

19 This Part applies in relation to the following entities:

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

1 Division 2—Obligations and benefits under controlled 2 trials

3 179C Obligations under controlled trials

4 *Entities released from obligations*

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

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

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

14 *Entities must satisfy obligations in a different way*

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

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

24 *Entities must comply with additional obligations*

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

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

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

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Schedule 1 Amendments

1 **179D Benefits under controlled trials**

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

5 **Division 3—Participation in controlled trials**

6 **179E Approval of participation in controlled trials**

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

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

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

31 *Period for which approval is in force*

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

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Amendments **Schedule 1**

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

3 *Copy of approval to be given to entity*

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

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

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

13 *Approval not a legislative instrument*

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

15 **179F Application to participate in controlled trial**

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

18 *Documentary application*

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

25 *Electronic application*

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

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Schedule 1 Amendments

1 **179G Election to participate in controlled trial**

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

4 *Documentary election*

5 (2) A documentary election must:

- 6 (a) be communicated to the Comptroller-General of Customs;
7 and
8 (b) be in an approved form; and
9 (c) contain the information required by the approved form; and
10 (d) be signed in a manner indicated by the approved form.

11 *Electronic election*

12 (3) An electronic election must:

- 13 (a) be communicated to the Comptroller-General of Customs;
14 and
15 (b) communicate such information as is set out in an approved
16 statement.

17 **179H Conditions of approvals**

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

21 **179J Variation, suspension or revocation of approvals**

22 (1) The Comptroller-General of Customs may, in writing, vary,
23 suspend or revoke an entity's approval under section 179E in
24 relation to a controlled trial if the Comptroller-General of Customs
25 reasonably believes that in relation to that trial:

- 26 (a) the entity has not complied, or is not complying, with any
27 condition specified in the rules in relation to that trial; or
28 (b) the entity has not satisfied an obligation covered by
29 subsection 179C(2) in the way covered by
30 subsection 179C(3); or

- 1 (c) the entity has not complied with an obligation covered by
2 subsection 179C(4).
- 3 (2) In deciding whether to vary, suspend or revoke an approval, the
4 Comptroller-General of Customs must consider:
- 5 (a) any matter specified in the rules under paragraph 179L(3)(d)
6 in relation to that trial; and
- 7 (b) any other matter that the Comptroller-General of Customs
8 considers relevant.
- 9 (3) Any variation, suspension or revocation of an approval must be in
10 accordance with the procedures specified in the rules in relation to
11 that trial.

12 *Consequences of suspension*

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

22 **Division 4—Instruments**

23 **179K General qualification criteria for any controlled trial**

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

27 **179L Rules specific to a controlled trial**

- 28 (1) The Comptroller-General of Customs may, by legislative
29 instrument, make rules that make provision for and in relation to
30 the following:

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Schedule 1 Amendments

- 1 (a) establishing a controlled trial;
2 (b) the period of operation of a controlled trial;
3 (c) extending the period of operation of a controlled trial;
4 (d) revoking a controlled trial.
- 5 (2) For the purposes of subsection (1):
6 (a) rules that establish a controlled trial must specify the purpose
7 of the controlled trial; and
8 (b) the period of operation of a controlled trial must not be more
9 than 12 months; and
10 (c) the period of operation of a controlled trial may begin after
11 the day on which the controlled trial is established; and
12 (d) an extension of the period of operation of a controlled trial
13 must not be more than 6 months; and
14 (e) the period of operation of a controlled trial must not be
15 extended more than once.
- 16 (3) The Comptroller-General of Customs may, by legislative
17 instrument, make rules that make provision for and in relation to
18 the following for a controlled trial:
19 (a) the eligibility criteria that an entity must meet in order for the
20 Comptroller-General of Customs to approve an entity's
21 participation in that trial;
22 (b) the matters that the Comptroller-General of Customs must
23 consider in deciding whether to approve an entity's
24 participation in that trial;
25 (c) the conditions that approvals under section 179E in relation
26 to that trial are subject to;
27 (d) the matters that the Comptroller-General of Customs must
28 consider when deciding whether to vary, suspend or revoke
29 an approval under section 179E in relation to that trial;
30 (e) the procedures that the Comptroller-General of Customs
31 must follow when varying, suspending or revoking an
32 approval under section 179E in relation to that trial;
33 (f) each obligation under a controlled trial provision that, in
34 relation to that trial, entities holding an approval, that is in
35 force, to participate in that trial are released from;
36 (g) the following:
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- 1 (i) each obligation under a controlled trial provision that, in
2 relation to that trial, entities holding an approval, that is
3 in force, to participate in that trial cannot satisfy in the
4 way required by this Act;
- 5 (ii) the way in which those entities must satisfy that
6 obligation;
- 7 (h) each obligation that, in relation to that trial, entities holding
8 an approval, that is in force, to participate in that trial must
9 comply with, being an obligation that is in relation to a
10 controlled trial provision;
- 11 (i) the kind of benefits that entities holding an approval, that is
12 in force, to participate in that trial may receive and any
13 criteria to be satisfied for entities to receive those benefits;
- 14 (j) a matter that is incidental or ancillary to a matter covered by
15 paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (i).

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

- 17 (4) To avoid doubt, rules made under this section may not do the
18 following:
- 19 (a) create an offence or civil penalty;
- 20 (b) provide powers of:
- 21 (i) arrest or detention; or
- 22 (ii) entry, search or seizure;
- 23 (c) impose a tax;
- 24 (d) set an amount to be appropriated from the Consolidated
25 Revenue Fund under an appropriation in this Act;
- 26 (e) directly amend the text of this Act.