Customs Act 1901

No. 6, 1901

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This compilation is in 5 volumes

Volume 1:	Parts I to VI sections 1 to 126C
Volume 2:	Parts IVA to XI sections 126D to 183UAA
Volume 3:	**Parts XII to XVA** **sections 183UA to 269SK**
Volume 4:	Parts XVB to XVII sections 269SM to 279 Schedule I
Volume 5:	Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Customs Act 1901* that shows the text of the law as amended and in force on 19 September 2026 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part XII—Officers

Division 1—Powers of officers

Subdivision A—Preliminary

183UA Definitions

(1) In this Division, unless the contrary intention appears:

authorised person means:

(a) in relation to an application for, or for the execution of, a search warrant—an officer of Customs; and

(b) in relation to an application for, or for the execution of, a seizure warrant in respect of goods referred to in subparagraph (a)(i) of the definition of ***forfeited goods***:

(i) an officer of Customs; or

(ii) an officer of police; or

(iii) a member of the Defence Force; and

(c) in relation to an application for, or for the execution of, a seizure warrant in respect of goods referred to in subparagraph (a)(ii) or paragraph (b) of the definition of ***forfeited goods***—an officer of Customs; and

(d) in relation to the exercise of powers under section 203B or 203C:

(i) an officer of Customs; or

(ii) an officer of police; or

(iii) a member of the Defence Force; and

(da) in relation to the exercise of powers under section 203CA or 203CB:

(i) an officer of Customs; or

(ii) a maritime officer who is exercising maritime powers under the *Maritime Powers Act 2013* in relation to a ship or aircraft to which section 203CA of this Act applies; or

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(iii) an officer of police; or

(iv) a member of the Defence Force; and

(e) in relation to an application for, or the execution of, a seizure warrant under section 203DA—an officer of Customs.

baggage means goods:

(a) that are carried by or for a traveller, including the captain and crew members, on board the same ship or aircraft as the traveller; or

(b) that a traveller intended to be so carried.

communication in transit means a communication (within the meaning of the *Telecommunications Act 1997*) passing over a telecommunications network (within the meaning of that Act).

container includes:

(a) a trailer or other like receptacle, whether with or without wheels, that is used for the movement of goods from one place to another; and

(b) any baggage; and

(c) any other thing that is or could be used for the carriage of goods, whether or not designed for that purpose.

conveyance means an aircraft, railway rolling stock, vehicle or vessel of any kind.

Customs place means:

(aa) a place owned or occupied by the Commonwealth for use for the purposes of the Customs Acts; or

(a) a port, airport or wharf that is appointed, and the limits of which are fixed, under section 15; or

(aaa) a place to which a ship or aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1), while that ship or aircraft remains at that place; or

(b) a place that is the subject of a permission under subsection 58(2); or

(c) a boarding station that is appointed under section 15; or

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(d) a place described in a depot licence that is granted under section 77G; or

(e) a place covered by a warehouse licence that is granted under subsection 79(1); or

(f) a place approved in an instrument under subsection (2) as a place for the examination of international mail; or

(g) a place from which a ship or aircraft that is the subject of a permission under section 175 is required to depart, between the grant of that permission and the departure of the ship or aircraft; or

(h) a place to which a ship or aircraft that is the subject of a permission under section 175 is required to return, while that ship or aircraft remains at that place; or

(i) a section 234AA place that is not a place, or a part of a place, referred to in paragraph (aa), (a), (aaa), (b), (c), (d), (g) or (h).

data held in a computer includes:

(a) data held in any removable data storage device for the time being held in a computer; or

(b) data held in a data storage device on a computer network of which the computer forms a part.

data storage device means a thing containing, or designed to contain, data for use by a computer.

designated container means a container referred to in paragraph (c) of the definition of ***container***.

engineered stone has the same meaning as in regulation 5M of the *Customs (Prohibited Imports) Regulations 1956*.

evidential material, in relation to an offence, whether the offence is indictable or summary, means a thing relevant to the offence, including such a thing in electronic form.

executing officer, in relation to a search warrant or to a seizure warrant, means:

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(a) an authorised person named in the warrant by the judicial officer issuing it as being responsible for executing the warrant; or

(b) if that authorised person does not intend to be present at the execution of the warrant—any authorised person whose name has been written in the warrant by the authorised person so named; or

(c) another authorised person whose name has been written in the warrant by the authorised person last named in the warrant.

forfeited goods means:

(a) goods described as forfeited to the Crown under:

(i) section 228, 228A, 228B, 228C, 229, 229A or 230 of this Act; or

(ii) section 7, 10, 11 or 13 of the *Commerce (Trade Descriptions) Act 1905*; or

(b) tobacco forfeited to the Crown under paragraph 116(1)(aa) of the *Excise Act 1901* in respect of an offence committed against a provision in Subdivision 308-A in Schedule 1 to the *Taxation Administration Act 1953*.

judicial officer means:

(a) in relation to a search warrant, or to a seizure warrant under section 203:

(i) a magistrate; or

(ii) a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants; or

(b) in relation to a seizure warrant under section 203DA:

(i) a Judge of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory in relation to whom a consent under subsection 183UD(1), and a nomination under subsection 183UD(2), are in force; or

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(ii) a Judge of the Supreme Court of a State in respect of whom an appropriate arrangement in force under section 11 is applicable; or

(iii) a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in subparagraph (i) and in respect of whom an appropriate arrangement in force under section 11 is applicable.

occupier, in relation to premises that are a conveyance or a container, means the person having charge of the conveyance or container.

offence means:

(a) an offence against this Act; or

(b) an offence against the *Commerce (Trade Descriptions) Act 1905*; or

(c) an offence against section 72.13 or Division 307 or 361 of the *Criminal Code*; or

(d) an offence against a provision in Subdivision 308-A in Schedule 1 to the *Taxation Administration Act 1953*.

ordinary search means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and

(b) an examination of those items.

person assisting, in relation to a search warrant or to a seizure warrant, means:

(a) a person who is an authorised person and who is assisting in the execution of the warrant; or

(b) a person who is not an authorised person and who has been authorised by the Comptroller-General of Customs to assist in executing the warrant.

premises includes a place, a conveyance or a container.

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prohibited psychoactive substance means a psychoactive substance (within the meaning of Part 9.2 of the *Criminal Code*) that:

(a) is not a substance to which subsection 320.2(2) of the *Criminal Code* applies; and

(b) has been imported into Australia.

prohibited serious drug alternative means a substance:

(a) the presentation of which includes an express or implied representation that the substance is a serious drug alternative (within the meaning of Part 9.2 of the *Criminal Code*); and

(b) that is not a substance to which subsection 320.3(3) of the *Criminal Code* applies; and

(c) that has been imported into Australia.

recently used conveyance, in relation to a search of a person, means a conveyance that the person had operated or occupied at any time within 24 hours before the search commenced.

search warrant means a warrant issued under section 198 or 199A.

seizable item means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

seizure notice means:

(a) in relation to Subdivision G—a notice of the kind mentioned in section 205A; and

(b) in relation to Subdivision GA—a notice of the kind mentioned in section 209E.

seizure warrant means a warrant issued under section 203 or 203DA.

serious offence has the same meaning as in Part IAA of the *Crimes Act 1914.*

special forfeited goods means:

(a) forfeited goods referred to in paragraph 229(1)(a) that:

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(i) are narcotic goods; or
(ii) are a prohibited psychoactive substance; or
(iii) are a prohibited serious drug alternative; or
(iv) consist of a border controlled precursor; or

(b) forfeited goods referred to in paragraph 229(1)(b), (da), (e), (n) or (na).

telecommunications facility means a facility within the meaning of the *Telecommunications Act 1997*.

vaping goods has the same meaning as in regulation 5A of the *Customs (Prohibited Imports) Regulations 1956*.

warrant premises means premises in relation to which a search warrant or a seizure warrant is in force.

(2) For the purposes of paragraph (f) of the definition of ***Customs place*** in subsection (1), the Comptroller-General of Customs may, by legislative instrument, approve a place as a place for the examination of international mail.

(2AA) For the purposes of this Part, an offence against section 6 of the *Crimes Act 1914* that relates to an offence against section 72.13 of the *Criminal Code* is taken to be an offence against section 72.13 of the *Criminal Code*.

(2A) For the purposes of this Part, an offence against section 6 of the *Crimes Act 1914* that relates to an offence against Division 307 or 361 of the *Criminal Code* is taken to be an offence against that Division.

(3) For the purposes of this Part:
(a) an offence against section 141.1, 142.1, 142.2 or 149.1 of the *Criminal Code* that relates to this Act is taken to be an offence against this Act; and
(aa) an offence against section 141.1, 142.1, 142.2 or 149.1 of the *Criminal Code* that relates to section 72.13 of the *Criminal Code* is taken to be an offence against section 72.13 of the *Criminal Code*; and

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(b) an offence against section 141.1, 142.1, 142.2 or 149.1 of the *Criminal Code* that relates to Division 307 or 361 of the *Criminal Code* is taken to be an offence against that Division.

183UB Law relating to legal professional privilege not affected

This Division does not affect the law relating to legal professional privilege.

183UC Comptroller-General of Customs may give directions concerning the exercise of powers under this Division

The Comptroller-General of Customs may, by legislative instrument, give directions concerning:

(a) the circumstances in which the powers in this Division may be exercised; and

(b) the officers of Customs who are entitled to exercise those powers; and

(c) the manner and frequency of reporting to the Comptroller-General of Customs concerning the exercise of those powers.

183UD Judges who may issue seizure warrants for goods in transit

(1) A Judge of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory may, by writing, consent to be nominated by the Minister under subsection (2).

(2) The Minister may, by writing, nominate a Judge of a court referred to in subsection (1) in relation to whom a consent is in force under that subsection to be a judicial officer for the purposes of paragraph (b) of the definition of ***judicial officer*** in subsection 183UA(1).

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Subdivision B—General regulatory powers

186 General powers of examination of goods subject to customs control

(1) Any officer may, subject to subsections (2) and (3), examine any goods subject to customs control, and the expense of the examination including the cost of removal to the place of examination shall be borne by the owner.

(2) In the exercise of the power to examine goods, the officer of Customs may do, or arrange for another officer of Customs or other person having the necessary experience to do, whatever is reasonably necessary to permit the examination of the goods concerned.

(3) Without limiting the generality of subsection (2), examples of what may be done in the examination of goods include the following:

(a) opening any package in which goods are or may be contained;

(b) using a device, such as an X-ray machine or ion scanning equipment, on the goods;

(c) testing or analysing the goods;

(d) measuring or counting the goods;

(e) if the goods are a document—reading the document either directly or with the use of an electronic device;

(f) using dogs to assist in examining the goods.

(4) Goods that are subject to customs control under section 31 do not cease to be subject to customs control merely because they are removed from a ship or aircraft in the course of an examination under this section.

186AA General powers of examination of goods loaded onto or unloaded from ships or aircraft

(1) This section applies in relation to the following:

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(a) a ship or aircraft in respect of a voyage or flight to a place in Australia from a place outside Australia;
(b) a ship or aircraft in respect of a voyage or flight to a place outside Australia from a place in Australia.

Goods to be loaded onto the ship or aircraft

(2) If:
(a) an officer has reason to believe that goods are to be loaded onto the ship or aircraft at an examinable place; and
(b) the goods are to be unloaded at another examinable place on the same voyage or flight;

then:
(c) any officer may, subject to subsections (5) and (6), examine the goods while the goods are at the examinable place mentioned in paragraph (a); and
(d) the goods are subject to customs control while the goods are being so examined.

Goods unloaded from the ship or aircraft

(3) If:
(a) goods are loaded onto the ship or aircraft at an examinable place; and
(b) the goods are unloaded from the ship or aircraft at another examinable place on the same voyage or flight;

then:
(c) any officer may, subject to subsections (5) and (6), examine the goods while the goods are at the examinable place mentioned in paragraph (b); and
(d) the goods are subject to customs control while the goods are being so examined.

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Rules relating to examination of goods

(4) The expense of an examination referred to in subsection (2) or (3), including the cost of removal to the place of examination, is to be borne by the owner of the goods.

(5) In the exercise of the power to examine goods, an officer may do, or arrange for another officer or other person having the necessary experience to do, whatever is reasonably necessary to permit the examination of the goods.

(6) Without limiting subsection (5), examples of what may be done in the examination of goods include the following:

(a) opening any package in which goods are or may be contained;

(b) using a device, such as an X-ray machine or ion scanning equipment, on the goods;

(c) testing or analysing the goods;

(d) measuring or counting the goods;

(e) if the goods are a document—reading the document either directly or with the use of an electronic device;

(f) using dogs to assist in examining the goods.

No limit on other provisions

(7) This section does not:

(a) limit the application of any other provision of this Act that provides for goods to be subject to customs control; and

(b) limit the application of any other provision of this Act that provides for the examination of goods.

Definition

(8) In this section:

examinable place means the following:

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(a) a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight);
(b) a place to which a ship or aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1);
(c) a place that is the subject of a permission under subsection 58(2).

186A Power to make copies of, and take extracts from, documents in certain circumstances

(1) If:
(a) a document is examined under section 186 or 186AA; and
(b) as a result of that examination, an officer of Customs is satisfied that the document or part of the document may contain information relevant to:
(i) an importation or exportation, or to a proposed importation or exportation, of prohibited goods; or
(ii) the commission or attempted commission of any other offence against this Act or of any offence against a prescribed Act; or
(iii) the performance of functions under section 17 of the *Australian Security Intelligence Organisation Act 1979*; or
(iv) the performance of functions under section 6 of the *Intelligence Services Act 2001*; or
(v) security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*);

the officer of Customs may make a copy of, or take an extract from, the document, or arrange for another officer of Customs or other person having the necessary experience, to make such a copy or take such an extract.

(2) Without limiting the generality of subsection (1), a copy may be made of, or an extract taken from, a document:

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(a) by photocopying the document or a part of the document; or
(b) by photographing the document or a part of the document; or
(c) by electronically scanning the document or a part of the document; or
(d) by making an electronic copy of information contained in the document or a part of the document; or
(e) by making a written copy of information contained in the document or a part of the document.

186B Compensation for damage caused by copying

(1) If an activity undertaken in relation to the copying of a document, or the taking of an extract from a document, causes its loss or destruction or causes damage to the document, and the loss or destruction or the damage occurred wholly or partly as a result of:
(a) insufficient care being exercised in selecting the person to undertake the activity; or
(b) insufficient care being exercised by the person undertaking the activity;

compensation for the damage is payable to the owner of the documents concerned.

(2) Compensation is payable out of money appropriated by the Parliament for the purpose.

(3) In this section, a reference either to the loss or destruction of a document, or to damage to a document, includes a reference to the erasure or addition of electronic data or the corruption of such data.

187 Power to board and search

An officer may:
(a) board any ship or aircraft; or
(b) board any Australian resources installation:
(i) that is subject to customs control; or
(ii) at which there is a ship or aircraft that has come to the installation from a place outside Australia; or

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(iii) on which an officer has reasonable grounds to believe there are goods that are subject to customs control; or

(c) board a resources installation (other than an Australian resources installation) in respect of which permission under section 5A has been granted; or

(d) board any Australian sea installation:

(i) that is subject to customs control; or

(ii) at which there is a ship or aircraft that has come to the installation from parts beyond the seas; or

(iii) on which an officer has reasonable grounds to believe there are goods that are subject to customs control; or

(e) board a sea installation (other than an Australian sea installation) in respect of which permission under section 5B has been granted; or

(ea) board any Australian offshore electricity installation:

(i) that is subject to customs control; or

(ii) at which there is a ship or aircraft that has come to the installation from a place outside Australia; or

(iii) on which an officer has reasonable grounds to believe there are goods that are subject to customs control; or

(eb) board an overseas offshore electricity installation in respect of which permission under section 5BA has been granted; or

(f) search any ship or aircraft or an installation of the kind referred to in paragraph (b), (c), (d), (e), (ea) or (eb); or

(g) secure any goods on any ship or aircraft or on any installation of the kind referred to in paragraph (b), (c), (d), (e), (ea) or (eb).

188 Boarding

(1) The power of an officer to board shall extend to staying on board any ship, aircraft or installation and the Collector may station an officer on board any ship, aircraft or installation, and the master or pilot shall provide sleeping accommodation in the cabin and suitable and sufficient food for such officer.

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Penalty: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

189 Searching

The power of an officer to search shall extend to every part of any ship, aircraft or installation, and shall authorize the opening of any package, locker, or place and the examination of all goods.

189A Officers may carry arms in certain circumstances

(1) Subject to any directions from the Comptroller-General of Customs, an authorised arms issuing officer:

(a) may issue approved firearms and other approved items of personal defence equipment to officers authorised to carry arms, for the purpose of enabling the safe exercise, by such officers, of powers conferred on them under this Act or any other Act; and

(b) must take all reasonable steps to ensure that approved firearms, and other approved items of personal defence equipment, that are available for issue under paragraph (a), are kept in secure storage at all times when not required for use.

(2) The Comptroller-General of Customs may, by legislative instrument, give directions relating to the deployment of approved firearms and other approved items of personal defence equipment under this section. The directions may deal with:

(a) the circumstances in which approved firearms and other approved items of personal defence equipment may be issued; and

(b) the circumstances in which such firearms and other items of equipment are to be recalled; and

(c) the circumstances in which such firearms and other items of equipment can be used and the manner of their use; and

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(d) the nature of the secure storage of such firearms and other items of equipment when recalled; and

(e) any other matters relating to the deployment of such firearms and other items of equipment the Comptroller-General of Customs thinks appropriate.

(3) An officer is not required under, or by reason of, a law of a State or Territory:

(a) to obtain a licence or permission for the possession or use of an approved firearm or approved item of personal defence equipment; or

(b) to register such a firearm or other item of equipment.

(4) Nothing in this section affects the operation of any other provision of, or of the regulations under, this Act to the extent that that provision relates to the use of firearms in circumstances other than the circumstances referred to in this section.

(5) In this section:

approved firearm means a firearm of a kind declared by the regulations to be an approved firearm for the purposes of this section.

approved item of personal defence equipment means an extendable baton, an oleoresin capsicum spray or anti-ballistic clothing, and includes any other item that is declared by the regulations to be an approved item of personal defence equipment for the purposes of this section.

authorised arms issuing officer means an officer of Customs authorised under subsection (6) to exercise the powers or perform the functions of an authorised arms issuing officer under this section.

officer authorised to carry arms means an officer of Customs authorised under subsection (7) to use approved firearms and approved items of personal defence equipment issued by an authorised arms issuing officer for the purpose specified in paragraph (1)(a).

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(6) The Comptroller-General of Customs may, by writing, authorise an officer of Customs to exercise the powers or perform the functions of an authorised arms issuing officer under this section.

(7) The Comptroller-General of Customs may, by writing, authorise an officer of Customs to use approved firearms and approved items of personal defence equipment issued by an authorised arms issuing officer for the purpose specified in paragraph (1)(a).

190 Securing goods

The power of an officer to secure any goods shall extend to fastening down hatchways and other openings into the hold and locking up, sealing, marking or otherwise securing any goods.

191 Seals etc. not to be broken

(1) No fastening, lock, mark, or seal placed by an officer upon any goods or upon any door hatchway opening or place upon any ship, aircraft or installation shall be opened, altered, broken or erased whilst the goods upon which the fastening, lock, mark, or seal is placed or which are intended to be secured thereby shall remain subject to customs control.

Penalty: 60 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply to an opening, alteration, breaking or erasure by authority.

Note: For ***by authority***, see subsection 4(1).

192 Seals etc. on ship or aircraft in port bound to another port within Commonwealth

(1) No fastening, lock, mark, or seal placed by an officer upon any goods or upon any door, hatchway, opening, or place for the purpose of securing any stores upon any ship or aircraft which has

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arrived in any port or airport from parts beyond the seas and which is bound to any other port or airport within the Commonwealth shall be opened, altered, broken, or erased; and if any ship or aircraft enters any port or airport with any such fastening, lock, mark, or seal opened, altered, broken, or erased contrary to this section, the master or pilot commit an offence against this Act.

Penalty: 60 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply to an opening, alteration, breaking or erasure by authority.

Note: For ***by authority***, see subsection 4(1).

193 Officers may enter and remain upon coasts etc.

(1) An officer of Customs may, for the purpose of performing the officer's duties and functions as an officer, and a person assisting an officer of Customs may, for the purpose of assisting the officer to perform those duties and functions, enter and remain upon any part of the following:

(a) the coast, including but not limited to:
(i) the shores, banks and beaches of the coast; and
(ii) any man-made structure in or on the coast;

(b) a port, bay or harbour, including but not limited to:
(i) the shores, banks and beaches of the port, bay or harbour; and
(ii) any man-made structure in or on the port, bay or harbour;

(c) an airport (including an airport that has not been appointed under section 15) or airstrip;

(d) a lake or river, including but not limited to:
(i) the shores, banks and beaches of the lake or river; and
(ii) any man-made structure in or on the lake or river;

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(e) for the purpose of entering and remaining upon a place mentioned in paragraph (a), (b), (c), or (d)—an area of land or water that is adjacent to that place.

For this purpose, reasonable means, including reasonable force, may be used by the officer or the person assisting the officer.

(2) A person commits an offence if:

(a) the person is an owner, occupier or operator of any of the places mentioned in subsection (1); and

(b) the person is present at the place mentioned in subsection (1) at the time the officer, or the person assisting an officer, is exercising, or attempting to exercise, his or her powers under this section; and

(c) the person does not provide the officer, or the person assisting the officer, with all reasonable facilities and assistance, including a means of access to the place, that the person is reasonably capable of providing.

Penalty: 30 penalty units.

194 Ships on service may be moored in any place

(1) The officer in charge of a ship employed in the service of the Australian Border Force (within the meaning of the *Australian Border Force Act 2015*) may:

(a) moor, or haul up and moor, the ship to:

(i) any part of the coast or the shores, banks or beaches of any port, bay, harbour, lake or river; or

(ii) any man-made structure at or in any of the places mentioned in subparagraph (i); or

(iii) any man-made structure anywhere in the territorial sea of Australia, the contiguous zone of Australia, or the exclusive economic zone of Australia; and

(b) remain at the mooring as long as the officer considers necessary.

(2) A person commits an offence if:

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(a) the person is an owner, occupier or operator of any of the places mentioned in paragraph (1)(a); and
(b) the person does not provide the officer with all reasonable facilities and assistance that the person is reasonably capable of providing; and
(c) the person does not do so in circumstances where the officer is exercising, or attempting to exercise, his or her powers under this section.

Penalty: 30 penalty units.

195 Power to question passengers etc.

(1) An officer of Customs may question:
(a) any person who is on board a ship or an aircraft or an installation of the kind referred to in paragraph 187(b), (c), (d), (e), (ea) or (eb); or
(b) any person who has, or who the officer has reason to believe has, got off a ship or out of an aircraft; or
(c) any person who the officer has reason to believe is about to board a ship or an aircraft;

as to whether that person or any child or other person accompanying him or her has on his or her person, in his or her baggage or otherwise with him or her any:
(d) dutiable goods; or
(e) excisable goods; or
(f) prohibited goods.

(2) A person shall answer questions put to him or her in pursuance of subsection (1).

Penalty: 30 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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195A Power to question persons found in restricted areas

If a person is in a section 234AA place, an officer may ask the person for, and require the person to provide:

(a) the person's name; and

(b) the person's reason for being in the section 234AA place; and

(c) evidence of the person's identity.

Note: Failing to answer a question or produce a document when required to do so by an officer may be an offence (see sections 243SA and 243SB). However, a person does not have to answer if doing so would tend to incriminate the person (see section 243SC).

196C Power to question persons claiming packages

(1) Before an officer of Customs decides whether or not to authorise the delivery into home consumption of goods referred to in section 71, the officer may:

(a) request the person to state his or her full name and residential address; and

(b) ask the person whether he or she is the owner of the goods; and

(c) where the person states that he or she is not the owner of the goods, request the person to state the full name and residential address of the owner of the goods; and

(d) request the person to produce evidence of the correctness of the information given by him or her in compliance with a request made of him or her in pursuance of paragraph (a) or (c).

(2) A person shall not refuse or fail to comply with a request made of him or her, or to answer a question put to him or her, in pursuance of subsection (1).

Penalty: 10 penalty units.

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

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(3) Where a person refuses or fails to comply with a request made of him or her, or to answer a question put to him or her, by an officer of Customs in pursuance of subsection (1), the officer may:

(a) detain the person for the purposes of establishing his or her identity; or

(b) if the officer believes on reasonable grounds that there is no reasonable excuse for the person refusing or failing to so comply, detain the person and take him or her, without undue delay, before a magistrate to be charged with an offence against subsection (2).

(4) In this section, ***owner***, in relation to goods, means a person who has an interest in the goods.

197 Power to stop conveyances about to leave a Customs place

(1) If a conveyance is in a Customs place, an officer of Customs may:

(a) require the conveyance to stop; and

(b) check to establish that there is appropriate documentation authorising the movement of any goods in or on the conveyance that are subject to customs control within the meaning of section 30.

(2) For the purposes of subsection (1), an officer of Customs may question the person apparently in charge of the conveyance about any goods in, on, or in a container on, the conveyance.

(3) The power in paragraph (1)(b) includes a power to give directions relating to:

(a) the unloading of any goods from the conveyance; or

(b) their movement to a particular part of the Customs place for further examination.

(4) If a direction under subsection (3) is not complied with, an officer of Customs may do what is necessary to give effect to the direction or to arrange for it to be done.

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(5) An officer of Customs must not detain a conveyance under this section for longer than is necessary and reasonable to exercise the powers conferred by this section.

(6) A person in charge of a conveyance commits an offence if:
  (a) the conveyance is in a Customs place; and
  (b) an officer of Customs requires the conveyance to stop; and
  (c) the person does not stop the conveyance as so required.

  Penalty: 60 penalty units.

(7) This offence is an offence of strict liability.

Subdivision C—Search warrants in respect of things believed to be evidential material

198 When search warrants relating to premises can be issued

(1) A judicial officer may issue a warrant to search premises if the judicial officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or within the next 72 hours there will be, any evidential material, other than evidential material that is also a forfeited good, on or in the premises.

(2) If:
  (a) the person applying for the warrant has, at any time previously, applied for a warrant relating to the search of, or the seizure of goods that are on or in, the same premises; and
  (b) the premises are not a Customs place;

  the person must state particulars of those applications and their outcome in the information.

(3) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:
  (a) the offence to which the warrant relates; and
  (b) a description of the premises to which the warrant relates; and

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(c) the kind of evidential material that is to be searched for under the warrant; and

(d) the name of the authorised person who, unless he or she inserts the name of another authorised person in the warrant, is to be responsible for executing the warrant; and

(e) the time at which the warrant expires (see subsection (3A)); and

(f) whether the warrant may be executed at any time or only during particular hours.

(3A) The time stated in the warrant under paragraph (3)(e) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

(4) The judicial officer is also to state in the warrant:

(a) that it authorises the seizure of things (other than evidential material of the kind referred to in paragraph (3)(c)) found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds:

(i) to be evidential material in relation to an offence to which the warrant relates or to another offence, or to be evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act); and

(ii) not to be forfeited goods;

if the executing officer or person assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and

(b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has

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any evidential material or seizable items in his or her possession.

(5) Paragraph (3)(e) and subsection (3A) do not prevent the issue of successive warrants in relation to the same premises.

(6) If the application for the warrant is made under section 203M, this section (other than subsection (3A)) applies as if:
  (a) subsection (1) referred to 48 hours rather than 72 hours; and
  (b) paragraph (3)(e) required the judicial officer to state in the warrant the period for which the warrant is to remain in force, which must not be more than 48 hours.

(7) A judicial officer of a particular State or Territory may issue a warrant in respect of the search of premises in another State or Territory.

(8) This section is not to be taken to limit any power of search granted to an officer of Customs under any other provision of a law of the Commonwealth.

199 The things that are authorised by a search warrant relating to premises

(1) A search warrant that is in force in relation to premises authorises the executing officer or a person assisting:
  (a) to enter the warrant premises; and
  (b) to search for and to record fingerprints found on or in the premises, and take samples of things (other than human biological fluid or tissue) found on or in the premises for forensic purposes; and
  (c) to search the premises for the kind of evidential material specified in the warrant, and to seize things of that kind found on or in the premises; and
  (d) to seize other things found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds:

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(i) to be evidential material in relation to an offence to which the warrant relates or to another offence, or to be evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act); and

(ii) not to be forfeited goods;

if the executing officer or person assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and

(e) if the warrant so allows:

(i) to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession; and

(ii) to seize any such material or items found in the course of the search.

(2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.

(3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:

(a) permits entry of the conveyance, wherever it is; and

(b) extends to every container on the conveyance.

(4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.

(4A) A warrant that is in force in relation to premises authorises the executing officer or a person assisting:

(a) to use:

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(i) a computer, or data storage device, found in the course of a search authorised under the warrant; or

(ii) a telecommunications facility operated or provided by the Commonwealth or a carrier; or

(iii) any other electronic equipment; or

(iv) a data storage device;

for the purpose of obtaining access to data (the ***relevant data***) that is held in the computer or device mentioned in subparagraph (i) at any time when the warrant is in force, in order to determine whether the relevant data is evidential material of a kind specified in the warrant; and

(b) if necessary to achieve the purpose mentioned in paragraph (a)—to add, copy, delete or alter other data in the computer or device mentioned in subparagraph (a)(i); and

(c) if, having regard to other methods (if any) of obtaining access to the relevant data which are likely to be as effective, it is reasonable in all the circumstances to do so:

(i) to use any other computer or a communication in transit to access the relevant data; and

(ii) if necessary to achieve that purpose—to add, copy, delete or alter other data in the computer or the communication in transit; and

(d) to copy any data to which access has been obtained, and that:

(i) appears to be relevant for the purposes of determining whether the relevant data is evidential material of a kind specified in the warrant; or

(ii) is evidential material of a kind specified in the warrant; and

(e) to do any other thing reasonably incidental to any of the above.

Note: As a result of the warrant, a person who, by means of a telecommunications facility, obtains access to data stored in a computer etc. will not commit an offence under Part 10.7 of the *Criminal Code* or equivalent State or Territory laws (provided that the person acts within the authority of the warrant).

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(4B) Subsection (4A) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that is likely to:

(a) materially interfere with, interrupt or obstruct:

(i) a communication in transit; or

(ii) the lawful use by other persons of a computer;

unless the addition, deletion or alteration, or the doing of the thing, is necessary to do one or more of the things specified in the warrant; or

(b) cause any other material loss or damage to other persons lawfully using a computer.

(4C) It is immaterial whether a thing mentioned in subsection (4A) is done:

(a) at the warrant premises; or

(b) at any other place.

(5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

(6) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

199A When search warrants relating to persons can be issued

(1) A judicial officer may issue a warrant authorising an ordinary search or a frisk search of a person if the judicial officer is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that the person has in the person's possession, or will within the next 72 hours have in the person's possession, any computer, or data storage device, that is evidential material.

(2) If the person applying for the warrant has, at any time previously, applied for a warrant under this section relating to the same person, the person applying for the warrant must state particulars of those applications, and their outcome, in the information.

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(3) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:

(a) the offence to which the warrant relates; and

(b) the name or description of the person to whom the warrant relates; and

(c) the name of the authorised person who, unless the authorised person inserts the name of another authorised person in the warrant, is to be responsible for executing the warrant; and

(d) the time at which the warrant expires (see subsection (4)); and

(e) whether the warrant may be executed at any time or only during particular hours.

(4) The time stated in the warrant under paragraph (3)(d) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

(5) The judicial officer is also to state, in a warrant in relation to a person:

(a) that the warrant authorises the seizure of a computer or data storage device found, in the course of the search, on or in the possession of the person or in a recently used conveyance, if the executing officer or a person assisting believes on reasonable grounds that:

(i) the computer or device is evidential material in relation to an offence to which the warrant relates; and

(ii) the seizure of the computer or device is necessary to prevent its concealment, loss or destruction or its use in committing an offence; and

(b) the kind of search of a person that the warrant authorises.

(6) Paragraph (3)(d) and subsection (4) do not prevent the issue of successive warrants in relation to the same person.

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199B The things that are authorised by a search warrant relating to a person

(1) A warrant that is in force in relation to a person (the ***target person***) authorises the executing officer or person assisting:

(a) to search:

(i) the target person as specified in the warrant; and

(ii) any recently used conveyance;

for computers or data storage devices of the kind specified in the warrant; and

(b) to:

(i) seize computers or data storage devices of that kind; or

(ii) record fingerprints from computers or data storage devices; or

(iii) to take samples for forensic purposes from computers or data storage devices;

found in the course of the search; and

(c) to seize other things found on or in the possession of the target person or in the conveyance in the course of the search that the executing officer or person assisting believes on reasonable grounds to be:

(i) prohibited goods that are unlawfully carried by the target person; or

(ii) seizable items.

(2) A warrant that is in force in relation to a person (the ***target person***) authorises the executing officer or a person assisting:

(a) to use:

(i) a computer, or data storage device, found in the course of a search authorised under the warrant; or

(ii) a telecommunications facility operated or provided by the Commonwealth or a carrier; or

(iii) any other electronic equipment; or

(iv) a data storage device;

for the purpose of obtaining access to data (the ***relevant data***) that is held in the computer or device mentioned in

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subparagraph (i) at any time when the warrant is in force, in order to determine whether the relevant data is evidential material of a kind specified in the warrant; and

(b) if necessary to achieve the purpose mentioned in paragraph (a)—to add, copy, delete or alter other data in the computer or device mentioned in subparagraph (a)(i); and

(c) if, having regard to other methods (if any) of obtaining access to the relevant data which are likely to be as effective, it is reasonable in all the circumstances to do so:

(i) to use any other computer or a communication in transit to access the relevant data; and

(ii) if necessary to achieve that purpose—to add, copy, delete or alter other data in the computer or the communication in transit; and

(d) to copy any data to which access has been obtained, and that:

(i) appears to be relevant for the purposes of determining whether the relevant data is evidential material of a kind specified in the warrant; or

(ii) is evidential material of a kind specified in the warrant; and

(e) to do any other thing reasonably incidental to any of the above.

Note: As a result of the warrant, a person who, by means of a telecommunications facility, obtains access to data stored in a computer etc. will not commit an offence under Part 10.7 of the *Criminal Code* or equivalent State or Territory laws (provided that the person acts within the authority of the warrant).

(3) Subsection (2) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that is likely to:

(a) materially interfere with, interrupt or obstruct:

(i) a communication in transit; or

(ii) the lawful use by other persons of a computer;

unless the addition, deletion or alteration, or the doing of the thing, is necessary to do one or more of the things specified in the warrant; or

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(b) cause any other material loss or damage to other persons lawfully using a computer.

(4) It is immaterial whether a thing mentioned in subsection (2) is done:
(a) in the presence of the target person; or
(b) at any other place.

(5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

(6) If the warrant authorises an ordinary search or a frisk search of the target person, a search of the target person different from that so authorised must not be done under the warrant.

200 Use of equipment to examine or process things

(1) The executing officer of a warrant in relation to premises, or a person assisting, may bring to the warrant premises any equipment reasonably necessary for the examination or processing of a thing found on or in the premises in order to determine whether it is a thing that may be seized under the warrant.

(2) A thing found at warrant premises, or a thing found during a search under a warrant that is in force in relation to a person, may be moved to another place for examination or processing in order to determine whether it may be seized under a warrant if:
(a) both of the following apply:
(i) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance;
(ii) there are reasonable grounds to believe that the thing contains or constitutes evidential material; or
(b) for a thing found at warrant premises—the occupier of the premises consents in writing; or
(c) for a thing found during a search under a warrant that is in force in relation to a person—the person consents in writing.

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(3) If a thing is moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:

(a) inform the person referred to in paragraph (2)(b) or (c) (as the case requires) of the address of the place and the time at which the examination or processing will be carried out; and

(b) allow that person or his or her representative to be present during the examination or processing.

(3A) The thing may be moved to another place for examination or processing for no longer than whichever of the following is applicable:

(a) if the thing is a computer or data storage device—30 days;

(b) otherwise—72 hours.

(3B) An executing officer may apply to a judicial officer for one or more extensions of that time if the executing officer believes on reasonable grounds that the thing cannot be examined or processed within the time applicable under subsection (3A) or that time as previously extended.

(3C) The executing officer must give notice of the application to the person referred to in paragraph (2)(b) or (c) (as the case requires), and that person is entitled to be heard in relation to the application.

(3D) If the thing is a computer or data storage device, a single extension cannot exceed 14 days.

(4) The executing officer of a warrant in relation to premises, or a person assisting, may operate equipment already on or in the warrant premises to carry out the examination or processing of a thing found on or in the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or person assisting believes on reasonable grounds that:

(a) the equipment is suitable for the examination or processing; and

(b) the examination or processing can be carried out without damage to the equipment or the thing.

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201 Use of electronic equipment on or in premises

(1) The executing officer or a person assisting may operate electronic equipment at the warrant premises to access data (including data not held at the premises) if he or she believes on reasonable grounds that:

(a) the data might constitute evidential material; and

(b) the equipment can be operated without damaging it.

Note: An executing officer can obtain an order requiring a person with knowledge of a computer or computer system to provide assistance: see section 201A.

(1A) If the executing officer or person assisting believes on reasonable grounds that any data accessed by operating the electronic equipment might constitute evidential material, he or she may:

(a) copy the data to a disk, tape or other associated device brought to the premises; or

(b) if the occupier of the premises agrees in writing—copy the data to a disk, tape or other associated device at the premises;

and take the device from the premises.

(1B) If:

(a) the executing officer or person assisting takes the device from the premises; and

(b) the Comptroller-General of Customs is satisfied that the data is not required (or is no longer required) for:

(i) investigating an offence against the law of the Commonwealth, a State or a Territory; or

(ii) judicial proceedings or administrative review proceedings; or

(iii) investigating or resolving a complaint under the *Ombudsman Act 1976* or the *Privacy Act 1988*;

the Comptroller-General of Customs must arrange for:

(c) the removal of the data from any device subject to customs control; and

(d) the destruction of any other reproduction of the data subject to customs control.

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(2) If the executing officer or a person assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can, by using facilities on or in the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced.

(3) The executing officer or a person assisting may seize equipment under paragraph (2)(a) only if it is not practicable to copy the material as mentioned in subsection (1A) or to put the material in documentary form as mentioned in paragraph (2)(b).

(4) If the executing officer or a person assisting believes on reasonable grounds that:

(a) evidential material may be accessible by operating electronic equipment on or in the premises; and

(b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

(5) The executing officer or a person assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

(6) The equipment may be secured:

(a) for a period not exceeding 24 hours; or

(b) until the equipment has been operated by the expert;

whichever first occurs.

(7) If the executing officer or a person assisting believes on reasonable grounds that the expert assistance will not be available within 24

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hours, he or she may apply to a judicial officer for an extension of that period.

(8) The executing officer or a person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

(9) The provisions of this Subdivision relating to the issue of warrants apply, with such modifications as are necessary, to the issuing of an extension.

201AA Use of electronic equipment at other place

(1) If electronic equipment is moved to another place under subsection 200(2), the executing officer or a person assisting may operate the equipment to access data (including data held at another place).

(2) If the executing officer or person assisting suspects on reasonable grounds that any data accessed by operating the electronic equipment constitutes evidential material, the executing officer or person assisting may copy any or all of the data accessed by operating the electronic equipment to a disk, tape or other associated device.

(3) If the Comptroller-General of Customs is satisfied that the data is not required (or is no longer required) for:

(a) investigating an offence against a law of the Commonwealth, a State or a Territory; or

(b) judicial proceedings or administrative review proceedings; or

(c) investigating or resolving a complaint under the *Ombudsman Act 1976* or the *Privacy Act 1988*;

the Comptroller-General of Customs must arrange for:

(d) the removal of the data from any device subject to customs control; and

(e) the destruction of any other reproduction of the data subject to customs control.

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(4) If the executing officer or a person assisting, after operating the equipment, finds that evidential material is accessible by doing so, the executing officer or person assisting may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can be put in documentary form—put the material in that form and seize the documents so produced.

(5) The executing officer or a person assisting may seize equipment under paragraph (4)(a) only if:

(a) it is not practicable to copy the data as mentioned in subsection (2) or to put the material in documentary form as mentioned in paragraph (4)(b); or

(b) possession of the equipment by the person referred to in paragraph 200(2)(b) or (c) (as the case requires) could constitute an offence.

201A Person with knowledge of a computer or a computer system to assist access etc.

(1) An executing officer may apply to a magistrate for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow the officer to do one or more of the following:

(a) access data held in, or accessible from, a computer or data storage device that:

(i) is on warrant premises; or

(ii) has been seized under this Subdivision; or

(iii) is found in the course of an ordinary search of a person, or a frisk search of a person, authorised by a search warrant;

(b) copy data held in, or accessible from, a computer, or data storage device, described in paragraph (a) to another data storage device;

(c) convert into documentary form or another form intelligible to an executing officer:

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(i) data held in, or accessible from, a computer, or data storage device, described in paragraph (a); or

(ii) data held in a data storage device to which the data was copied as described in paragraph (b).

(2) The magistrate may grant the order if the magistrate is satisfied that:

(a) there are reasonable grounds for suspecting that evidential material is held in, or is accessible from, the computer or data storage device; and

(b) the specified person is:

(i) reasonably suspected of having committed the offence stated in the relevant warrant; or

(ii) the owner or lessee of the computer or device; or

(iii) an employee of the owner or lessee of the computer or device; or

(iv) a person engaged under a contract for services by the owner or lessee of the computer or device; or

(v) a person who uses or has used the computer or device; or

(vi) a person who is or was a system administrator for the system including the computer or device; and

(c) the specified person has relevant knowledge of:

(i) the computer or device or a computer network of which the computer or device forms or formed a part; or

(ii) measures applied to protect data held in, or accessible from, the computer or device.

Offences

(3) A person commits an offence if:

(a) the person is subject to an order under this section; and

(b) the person is capable of complying with a requirement in the order; and

(c) the person omits to do an act; and

(d) the omission contravenes the requirement.

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Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) A person commits an offence if:

(a) the person is subject to an order under this section; and

(b) the person is capable of complying with a requirement in the order; and

(c) the person omits to do an act; and

(d) the omission contravenes the requirement; and

(e) the offence to which the relevant warrant relates is a serious offence.

Penalty for contravention of this subsection: Imprisonment for 10 years or 600 penalty units, or both.

201B Accessing data held on other premises—notification to occupier of that premises

(1) If:

(a) data that is held on premises other than the warrant premises is accessed under subsection 201(1) or 201AA(1); and

(b) it is practicable to notify the occupier of the other premises that the data has been accessed under a warrant;

the executing officer must:

(c) do so as soon as practicable; and

(d) if the executing officer has arranged, or intends to arrange, for continued access to the data under subsection 201(1A) or (2) or 201AA(2) or (4)—include that information in the notification.

(2) A notification under subsection (1) must include sufficient information to allow the occupier of the other premises to contact the executing officer.

202 Compensation for damage to equipment or data

(1) If:

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(a) damage is caused to equipment as a result of it being operated as mentioned in section 200, 201 or 201AA; or

(b) the data recorded on or accessible from the equipment is damaged;

and the damage was caused as a result of:

(c) insufficient care being exercised in selecting the person who was to operate the equipment; or

(d) insufficient care being exercised by the person operating the equipment;

compensation for the damage is payable to the owner of the equipment or the user of the data concerned.

(2) For the purposes of subsection (1), damage to data includes damage by erasure of data or addition of other data.

(3) Compensation is payable out of money appropriated by the Parliament for the purpose.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

202A Copies of seized things to be provided

(1) Subject to subsection (2), if the executing officer or a person assisting seizes, under a warrant relating to premises:

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device, the information in which can be readily copied;

the executing officer or person assisting must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the document, film, computer file, thing or information to that person as soon as practicable after the seizure.

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(2) Subsection (1) does not apply if:

(a) the thing that has been seized was seized under subsection 201(1A) or paragraph 201(2)(b) or 201AA(4)(a); or

(b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

202B Relationship of this Subdivision to parliamentary privileges and immunities

To avoid doubt, this Subdivision does not affect the law relating to the powers, privileges and immunities of any of the following:

(a) each House of the Parliament;

(b) the members of each House of the Parliament;

(c) the committees of each House of the Parliament and joint committees of both Houses of the Parliament.

Subdivision D—Seizure of goods believed to be forfeited goods

203 When seizure warrants for forfeited goods can be issued

(1) A judicial officer may issue a warrant to seize goods on or in particular premises if the judicial officer is satisfied by information on oath that an authorised person:

(a) has reasonable grounds for suspecting that the goods:

(i) are forfeited goods; and

(ii) are, or within the next 72 hours will be, on or in the premises; and

(b) has demonstrated the necessity, in all the circumstances, for seizure of the goods.

(2) Subsection (1) does not apply to the seizure of goods under section 203B, 203C, 203CA or 203CB.

(3) In considering whether the authorised person has demonstrated the necessity, in all the circumstances, for seizure of the goods, the

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judicial officer may have regard to, but is not limited to, consideration of the following factors:

(a) the seriousness or otherwise of any offence by reason of the commission of which the goods are believed to be forfeited goods;

(b) the circumstances in which any such offence is believed to have been committed;

(c) the pecuniary or other penalty that might be imposed for any such offence;

(d) the nature, quality, quantity and estimated value of the goods;

(e) whether an infringement notice might be given for any such offence;

(f) the inconvenience or cost to any person having a legal or equitable interest in the goods if they were seized.

(4) If:

(a) the person applying for the warrant has, at any time previously, applied for a warrant relating to the search of, or seizure of goods that are on or in, the same premises; and

(b) the premises are not a Customs place;

the person must state particulars of those applications and their outcome in the information.

(5) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:

(a) a description of the goods to which the warrant relates; and

(b) a description of the premises on or in which the goods are believed to be located; and

(c) the name of the authorised person who, unless that authorised person inserts the name of another authorised person in the warrant, is to be responsible for executing the warrant; and

(d) the time at which the warrant expires (see subsection (5A)); and

(e) whether the warrant may be executed at any time or only during particular hours.

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(5A) The time stated in the warrant under paragraph (5)(d) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

(6) The judicial officer is also to state in the warrant:

(a) that it authorises the seizure of goods (other than forfeited goods of the kind referred to in paragraph (5)(a)) found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods; and

(b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has any forfeited goods of the kind referred to in paragraph (5)(a), special forfeited goods or seizable items in his or her possession; and

(c) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has in his or her possession any relevant evidential material.

(7) Paragraph (5)(d) and subsection (5A) do not prevent the issue of successive warrants in relation to the same premises.

(8) If the application for the warrant is made under section 203M, this section (other than subsection (5A)) applies as if:

(a) subsection (1) referred to 48 hours rather than 72 hours; and

(b) paragraph (5)(d) required the judicial officer to state in the warrant the period for which the warrant is to remain in force, which must not be more than 48 hours.

(9) A judicial officer of a particular State or Territory may issue a warrant in respect of the seizure of goods on or in premises in another State or Territory.

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(10) In this section:

relevant evidential material means evidential material in relation to an offence by reason of the commission of which goods are believed to be:

(a) forfeited goods of the kind referred to in paragraph (5)(a); or

(b) special forfeited goods.

203A The things that are authorised by seizure warrants for forfeited goods

(1) A seizure warrant that is in force under section 203 in relation to premises authorises the executing officer or a person assisting:

(a) to enter the warrant premises; and

(b) to search for the goods described in the warrant; and

(c) to seize the goods described in the warrant; and

(d) to seize other goods:

(i) that are found on or in the premises in the course of searching for the goods the subject of the warrant; and

(ii) that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods; and

(e) if the warrant so allows:

(i) to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any goods that are goods the subject of the warrant, special forfeited goods or seizable items in his or her possession; and

(ii) to seize any such goods or items found in the course of that search; and

(f) if the warrant so allows:

(i) to conduct an ordinary search or a frisk search of a person who is at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has in his or her possession any relevant evidential material; and

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(ii) to seize any relevant evidential material found in the course of that search.

(2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.

(3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:

(a) permits entry of the conveyance, wherever it is; and

(b) extends to every container on the conveyance.

(4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.

(5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

(6) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

(7) In this section:

relevant evidential material means evidential material in relation to an offence by reason of the commission of which goods are believed to be:

(a) goods that are the subject of the warrant; or

(b) special forfeited goods.

203B Seizure without warrant of special forfeited goods, or of evidential material relating to special forfeited goods, at a Customs place

(1) This section applies in 2 circumstances, namely:

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(a) in a circumstance where an authorised person suspects on reasonable grounds that there are special forfeited goods:
  (i) at, or in a container (other than a designated container in the immediate physical possession of a person to whom subparagraph (b)(i) applies) at, a Customs place; or
  (ii) in, on, or in a container (other than a designated container in the immediate physical possession of a person to whom subparagraph (b)(i) applies) on, a conveyance at a Customs place; or

(b) in a circumstance where a person:
  (i) is at a Customs place that is also a designated place; and
  (ii) has a designated container, or has goods reasonably suspected by an authorised person to be special forfeited goods, in his or her immediate physical possession; but
  (iii) is not carrying that container or those goods on his or her body.

Note 1: ***Container*** and ***designated container*** have special definitions for the purposes only of this Division.

Note 2: The baggage of a passenger entering or leaving Australia or of the captain or crew of a vessel or aircraft so entering or leaving is not a designated container.

Note 3: To determine the question whether a person is carrying a designated container, or goods reasonably suspected of being special forfeited goods, on his or her body, see subsection 4(19).

(2) In the circumstance referred to in paragraph (1)(a), the authorised person may, without warrant:
  (a) search the Customs place, or the container at that place, for special forfeited goods; or
  (b) stop and detain at the Customs place the conveyance and search it and any container on it for special forfeited goods;

as the case requires, and seize any goods that the authorised person reasonably suspects are special forfeited goods if the authorised person finds them there.

(2A) In the circumstance referred to in paragraph (1)(b), an authorised person who is an officer of Customs may, without warrant:

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(a) search any designated container in the immediate physical possession of the person to whom that paragraph applies; and

(b) seize any goods reasonably suspected by the authorised person of being special forfeited goods (whether or not those goods are found as a result of such a search).

(2B) An authorised person must not exercise the powers referred to in subsection (2A) unless the person having immediate physical possession of the container to be searched is present at the time when the container is searched.

(2C) For the avoidance of doubt, the power of the authorised person under subsection (2) to seize, without warrant, goods found as a result of a search of, or at, a Customs place that are reasonably suspected of being special forfeited goods includes the power to seize, without warrant, any goods that:

(a) have been produced as a result of a frisk search of a person; or

(b) have been discovered on the body of a person as a result of an external search or an internal search of the person;

if the search is conducted under Division 1B at the Customs place and the goods are reasonably so suspected.

(3) If, in the course of searching under subsection (2) or (2A) for special forfeited goods, an authorised person finds a thing that the authorised person believes on reasonable grounds is evidential material relating to an offence committed in respect of those special forfeited goods, the authorised person may, without warrant, seize that thing whether or not the authorised person has found any such special forfeited goods.

(4) For the purposes of a search conducted under subsection (2) or (2A), the authorised person may question any person apparently in charge of the place, conveyance or container about any goods or thing at the place, in or on the conveyance, or in the container.

(5) The authorised person must exercise his or her powers subject to section 203D.

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203C Seizure without warrant of narcotic goods or of evidential material relating to narcotic goods at other places

(1) This section applies if:

(a) an authorised person suspects on reasonable grounds that there are special forfeited goods that are narcotic goods:

(i) at, or in a container at, a place other than a Customs place; or

(ii) in, on, or in a container on, a conveyance at a place other than a Customs place; or

(iii) in a container in the immediate physical possession of, but not carried on the body of, a person at a place other than a Customs place; and

(b) it is necessary to exercise a power under this section in order to prevent such goods from being concealed, lost or destroyed.

Note: Container has a special definition for the purposes only of this Division.

(2) The authorised person may, without warrant:

(a) search the place or any container at the place for narcotic goods; or

(b) stop and detain the conveyance about to leave the place, and search it and any container on it for narcotic goods; or

(c) search the container in the immediate physical possession of the person for narcotic goods;

as the case requires, and seize any goods that the authorised person reasonably suspects are narcotic goods if the authorised person finds them there.

(2A) For the avoidance of doubt, the power of the authorised person to seize, without warrant, goods found at a place other than a Customs place that are reasonably suspected of being narcotic goods includes the power to seize, without warrant, any goods that:

(a) have been produced as a result of a frisk search of a person; or

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(b) have been discovered on the body of a person as a result of an external search or an internal search of the person;

if the search is conducted under Division 1B at a place other than a Customs place and the goods are reasonably so suspected.

(3) If, in the course of searching under subsection (2) for special forfeited goods that are narcotic goods, an authorised person finds a thing that the authorised person believes on reasonable grounds is evidential material relating to an offence committed in respect of those goods, the authorised person may, without warrant, seize that thing whether or not the authorised person has found those goods.

(4) For the purposes of a search conducted under subsection (2), the authorised person may question any person apparently in charge of the place, conveyance or container about any goods or thing at the place, in or on the conveyance, or in the container.

(5) The authorised person must exercise his or her powers subject to section 203D.

203CA Seizure without warrant of certain goods on ship or aircraft in the Protected Zone

(1) This section applies to a ship if:

(a) the ship is outside the territorial sea of a foreign country; and

(b) the ship could be boarded under the *Maritime Powers Act 2013*; and

(c) the ship is exempt from any provision of the Customs Acts under subsection 30A(3) of this Act or the voyage of the ship is exempt from any such provision under subsection 30A(5) of this Act.

Note: Section 30A gives effect to provisions of the Torres Strait Treaty in relation to certain traditional activities.

(2) This section applies to an aircraft if:

(a) the aircraft has landed in Australia as a result of a maritime officer requiring the person in charge of the aircraft to land

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the aircraft under subsection 55(7) of the *Maritime Powers Act 2013*; and

(b) in the case of an Australian aircraft—the requirement is made when the aircraft is over anywhere except a foreign country; and

(c) in the case of an aircraft that is not an Australian aircraft—the requirement is made when the aircraft is over Australia; and

(d) the flight of the aircraft is exempt from any provision of the Customs Acts under subsection 30A(5) of this Act.

Note: Section 30A gives effect to provisions of the Torres Strait Treaty in relation to certain traditional activities.

(3) An authorised person may seize without warrant any goods (other than narcotic goods) on the ship or aircraft that the authorised person reasonably suspects are special forfeited goods.

Note: For seizure of narcotic goods without warrant, see section 203C of this Act and subparagraph 67(1)(b)(ii) of the *Maritime Powers Act 2013*.

(4) If, in the course of searching the ship or aircraft, an authorised person finds a thing that he or she believes on reasonable grounds is evidential material relating to an offence committed in respect of special forfeited goods, the authorised person may, without warrant, seize that thing.

(5) The authorised person must exercise his or her powers subject to section 203D.

203CB Seizure without warrant of certain other goods in the Protected Zone

(1) This section applies if an authorised person suspects on reasonable grounds that:

(a) goods are:

(i) at, or in a container at, a place that is near a ship or aircraft to which paragraph 203CA(1)(c) or (2)(d) applies; or

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(ii) in, on, or in a container on, a conveyance at such a place; or

(iii) in a container in the immediate physical possession of, but not carried on the body of, a person at such a place; and

(b) the goods:

(i) in the case of an arriving ship or aircraft—have been unloaded from that ship or aircraft; or

(ii) in the case of a leaving ship or aircraft—will be loaded onto that ship or aircraft; and

(c) the goods are special forfeited goods (other than narcotic goods).

(2) The authorised person may, without warrant:

(a) search the place or any container at the place for special forfeited goods (other than narcotic goods); or

(b) stop and detain the conveyance about to leave the place, and search it and any container on it for such goods; or

(c) search the container in the immediate physical possession of the person for such goods;

as the case requires, and seize any goods that the authorised person reasonably suspects are special forfeited goods (other than narcotic goods) if the authorised person finds them there.

Note: For seizure of narcotic goods without warrant, see section 203C of this Act and subparagraph 67(1)(b)(ii) of the *Maritime Powers Act 2013*.

(3) If, in the course of searching under subsection (2) for special forfeited goods, an authorised person finds a thing that he or she believes on reasonable grounds is evidential material relating to an offence committed in respect of those goods, the authorised person may, without warrant, seize that thing whether or not the authorised person has found those goods.

(4) For the purposes of a search conducted under subsection (2), the authorised person may question any person apparently in charge of the place, conveyance or container about any goods or thing at the place, in or on the conveyance, or in the container.

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(5) The authorised person must exercise his or her powers subject to section 203D.

203D How an authorised person is to exercise certain powers

(1) An authorised person who exercises powers under section 203B, 203C, 203CA or 203CB in relation to a conveyance must not detain the conveyance for longer than is necessary and reasonable to exercise those powers.

(2) An authorised person exercising powers under section 203B, 203C, 203CA or 203CB may use such force as is necessary and reasonable in the circumstances, but must not:

(a) forcibly remove any container or other goods from a person's physical possession; or

(b) damage any place, conveyance, container or other goods of which the person is apparently in charge;

unless:

(c) the person has been given a reasonable opportunity to facilitate the exercise of the powers by providing access to the place, conveyance, container or goods or by opening the conveyance or container; or

(d) it is not possible to give that person such an opportunity.

Subdivision DA—Seizure of certain goods in transit

203DA When seizure warrants for goods in transit can be issued

(1) A judicial officer may issue a warrant to seize goods on or in particular premises if the judicial officer is satisfied by information on oath that the Minister has reasonable grounds for suspecting that:

(a) the goods are, or within the next 72 hours will be, on or in the premises; and

(b) the goods have been or will be brought into Australia on a ship or aircraft and are intended to be kept on board the ship or aircraft for shipment on to a place outside Australia,

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without being imported into Australia or exported from Australia; and

(c) the goods satisfy either or both of the following subparagraphs:

(i) the goods are connected, whether directly or indirectly, with the carrying out of a terrorist act, whether a terrorist act has occurred, is occurring or is likely to occur;

(ii) the existence or the shipment of the goods prejudices, or is likely to prejudice, Australia's defence or security or international peace and security.

(2) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:

(a) a description of the goods to which the warrant relates; and

(b) a description of the premises on or in which the goods are believed to be located; and

(c) the name of the authorised person who, unless that authorised person inserts the name of another authorised person in the warrant, is to be responsible for executing the warrant; and

(d) the time at which the warrant expires (see subsection (3)); and

(e) whether the warrant may be executed at any time or only during particular hours.

(3) The time stated in the warrant under paragraph (2)(d) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

(4) The judicial officer is also to state in the warrant that it authorises the seizure of goods found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods.

(5) Paragraph (2)(d) and subsection (3) do not prevent the issue of successive warrants in relation to the same premises.

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(6) If the application for the warrant is made under section 203M, this section (other than subsection (3)) applies as if:
  (a) subsection (1) referred to 48 hours rather than 72 hours; and
  (b) paragraph (2)(d) required the judicial officer to state in the warrant the period for which the warrant is to remain in force, which must not be more than 48 hours.

(7) A judicial officer of a particular State or Territory may issue a warrant in respect of the seizure of goods on or in premises in another State or Territory.

203DB The things that are authorised by seizure warrants for goods in transit

(1) A seizure warrant that is in force under section 203DA in relation to premises authorises the executing officer or a person assisting:
  (a) to enter the warrant premises; and
  (b) to search for the goods described in the warrant; and
  (c) to seize the goods described in the warrant; and
  (d) to seize other goods:
    (i) that are found on or in the premises in the course of searching for the goods the subject of the warrant; and
    (ii) that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods.

(2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.

(3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:
  (a) permits entry of the conveyance, wherever it is; and
  (b) extends to every container on the conveyance.

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(4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.

(5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

Subdivision E—Provisions applicable both to search and seizure warrants

203E Conduct of ordinary searches and frisk searches

An ordinary search or a frisk search of a person under this Division must, if practicable, be conducted by a person of the same sex as the person being searched.

203F Announcement before entry

(1) The executing officer must, before any person enters premises under a search warrant or a seizure warrant:
  (a) announce that he or she is authorised to enter the premises; and
  (b) give any person at the premises an opportunity to allow entry to the premises.

(2) The executing officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
  (a) the safety of a person (including the executing officer); or
  (b) that the effective execution of the warrant is not frustrated.

203G Details of warrant to be given to occupier

(1) If a search warrant or a seizure warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the place where the warrant is executed, the executing officer or a person assisting must make available to that person a copy of the warrant.

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(2) If a person is searched under a warrant in relation to premises, the executing officer or a person assisting must show the person a copy of the warrant.

(3) The executing officer must identify himself or herself to the person at the place where the warrant is executed.

(4) At the time of executing the warrant, the executing officer or a person assisting:
  (a) is not required to have in his or her possession or under his or her immediate control the original warrant; but
  (b) must have in his or her possession or under his or her immediate control a copy of the warrant.

(5) In this section:

a copy of the warrant means:
  (a) in relation to a warrant issued under section 198, 203 or 203DA—a copy that includes the signature of the judicial officer who issued the warrant; and
  (b) in relation to a warrant issued under section 203M—a completed form of warrant that includes the name of the judicial officer who issued the warrant.

203H Occupier entitled to be present during search or seizure

(1) If a search warrant or a seizure warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the place where the warrant is executed, the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search or seizure being conducted.

(2) The right to observe the search or seizure being conducted ceases if the person impedes the search or seizure.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

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203HA Requirement to provide name or address etc.

Request to provide name or address etc.

(1) If:

(a) a search warrant or seizure warrant in relation to premises is being executed; and

(b) the designated warrant officer believes on reasonable grounds that a person who is at or near the premises may be able to assist the officer in the execution of the warrant;

the officer may request the person to provide his or her name or address, or name and address, to the officer.

Offence—person's refusal or failure to comply with request etc.

(2) A person commits an offence if:

(a) a designated warrant officer:

(i) has made a request of the person under subsection (1); and

(ii) has informed the person of the reason for the request; and

(iii) has complied with any request that the person has made under paragraph (4)(b); and

(b) the person refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

(3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

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Offence—designated warrant officer's refusal or failure to comply with request etc.

(4) A designated warrant officer commits an offence if:

(a) the officer makes a request of a person under subsection (1); and

(b) the person requests the officer to provide to the person:

(i) his or her name or the address of his or her place of duty; or

(ii) his or her name and that address; or

(iii) if the officer is not in uniform and it is practicable for the officer to provide the evidence—evidence that he or she is an officer; and

(c) the officer refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

Definition

(5) In this section:

designated warrant officer, in relation to a search warrant or seizure warrant, means:

(a) the executing officer; or

(b) a person who is an authorised person and who is assisting in the execution of the warrant.

203J Availability of assistance and use of force in executing a warrant

In executing a search warrant or a seizure warrant:

(a) the executing officer may obtain such assistance; and

(b) the executing officer, or a person who is an authorised person and who is assisting in executing the warrant, may use such force against persons and things;

as is necessary and reasonable in the circumstances.

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203K Specific powers available to executing officers

(1) In executing a search warrant or a seizure warrant in relation to premises, the executing officer or a person assisting may:

(a) for a purpose incidental to the execution of the warrant; or

(b) if the occupier of the premises consents in writing;

take photographs or video recordings of the premises or of things on or in the premises.

(2) If a search warrant or a seizure warrant in relation to premises is being executed, the executing officer and the persons assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises:

(a) for not more than one hour; or

(b) for a longer period if the occupier of the premises consents in writing.

(3) If:

(a) the execution of a search warrant or of a seizure warrant is stopped by an order of a court; and

(b) the order is later revoked or reversed on appeal; and

(c) the warrant is still in force;

the execution of the warrant may be completed.

(4) If:

(a) the execution of a search warrant or of a seizure warrant is stopped by an order of a court; and

(b) the order is later revoked or reversed on appeal; and

(c) the warrant has ceased to be in force;

the court revoking or reversing the order may reissue the warrant for a further period not exceeding 7 days.

(5) The court must not exercise the power under subsection (4) unless it is satisfied of the matters set out in subsection 198(1), 199A(1), 203(1) or 203DA(1).

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203L Use of animals in executing a warrant

In executing a search warrant or a seizure warrant in relation to premises, the executing officer or a person assisting may bring to the premises any animals reasonably necessary for locating things the subject of the warrant.

203M Warrants by telephone or other electronic means

(1) An authorised person may apply to a judicial officer for a search warrant or for a seizure warrant by telephone, telex, fax or other electronic means:

(a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The judicial officer:

(a) may require communication by voice to the extent that it is practicable in the circumstances; and

(b) may make a recording of the whole or any part of any such communication by voice.

(3) An application under this section must include all information required to be provided in an ordinary application for a search warrant or for a seizure warrant, but the application may, if necessary, be made before the information is sworn.

(4) If an application is made to a judicial officer under this section and the judicial officer, after considering the information and having received and considered such further information (if any) as the judicial officer required, is satisfied that:

(a) a search warrant or a seizure warrant in the terms of the application should be issued urgently; or

(b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;

the judicial officer may complete and sign the same form of warrant that would be issued under section 198, 199A, 203 or 203DA.

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(5) If the judicial officer decides to issue the warrant, the judicial officer is to inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

(6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the judicial officer, stating on the form the name of the judicial officer and the day on which and the time at which the warrant was signed.

(7) The applicant must, not later than the day after:
   (a) the day of expiry of the warrant; or
   (b) the day on which the warrant was executed;

whichever is the earlier, give or transmit to the judicial officer the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.

(8) The judicial officer must:
   (a) attach to the documents provided under subsection (7) the form of warrant signed by the judicial officer; and
   (b) give or transmit to the applicant the attached documents.

(9) If:
   (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
   (b) the form of warrant signed by the judicial officer is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

203N Receipts for things seized under warrant

(1) If a thing is seized under a search warrant or a seizure warrant, the executing officer or a person assisting must provide a receipt for the thing.

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(2) If 2 or more things are seized, they may be covered in the one receipt.

203P Offence for making false statements in warrants

A person must not make, in an application for a search warrant or for a seizure warrant, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

203Q Offences relating to telephone warrants

(1) A person must not:

(a) state in a document that purports to be a form of warrant under section 203M the name of a judicial officer; or

(b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the judicial officer; or

(c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows:

(i) has not been approved by a judicial officer under that section; or

(ii) departs in a material particular from the terms authorised by a judicial officer under that section; or

(d) give to a judicial officer a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

(2) Paragraph (1)(a) does not apply if the judicial officer named in the warrant issued it.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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Subdivision F—Dealing with things seized as evidential material

203R Retention of things seized as evidential material

(1) Subject to any law of the Commonwealth, a State or a Territory permitting the retention, destruction or disposal of a thing seized as evidential material by an officer of Customs under a search warrant or by an authorised person under subsection 203B(3), 203C(3), 203CA(4) or 203CB(3), the officer or authorised person must return it if:

(a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or

(b) 120 days after its seizure:

(i) proceedings in respect of which the thing may afford evidence have not been started; and

(ii) an order permitting the thing to be retained has not been made under section 203S; and

(iii) an order of a court of the Commonwealth or of a State or Territory permitting the retention, destruction or disposal of the thing has not been made;

whichever first occurs.

(2) For the purposes of this section, the return of a thing requires its return to the person reasonably believed to be the owner of the thing in a condition as near as practicable to the condition in which it was seized.

203S Magistrate may permit a thing seized as evidential material to be retained

(1) If a thing is seized as evidential material by an officer of Customs under a search warrant, or by an authorised person under subsection 203B(3), 203C(3), 203CA(4) or 203CB(3), and:

(a) before the end of 120 days after the seizure; or

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(b) before the end of a period previously specified in a magistrate's order under this section;

proceedings in respect of which the thing may afford evidence have not been started:

(c) if the thing is seized by an officer of Customs under a search warrant—an officer of Customs may apply to a magistrate for an order that the thing be retained; or

(d) if the thing is seized by an authorised person under subsection 203B(3), 203C(3), 203CA(4) or 203CB(3)—an authorised person may apply to a magistrate for an order that the thing be retained.

(2) If the magistrate is satisfied:

(a) that it is necessary for the retention of the thing be continued:

(i) for the purposes of an investigation as to whether an offence has been committed; or

(ii) to enable evidence of an offence to be assembled for the purposes of a prosecution; and

(b) that there has been no avoidable delay in conducting the investigation or assembling the evidence concerned;

the magistrate may order that the thing be retained for a period specified in the order.

(3) Before making the application, the officer of Customs or the authorised person must:

(a) take reasonable steps to discover who has an interest in the retention of the thing; and

(b) if it is practicable to do so, notify each person who the officer believes to have such an interest of the proposed application.

Subdivision G—Dealing with goods seized as forfeited goods

203SA Subdivision does not apply to seized transit goods

This Subdivision does not apply to goods that have been seized under a seizure warrant under section 203DA, except for goods

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seized under paragraph 203DB(1)(d) (which covers goods suspected of being special forfeited goods).

Note: For seized transit goods, see Subdivision GA.

203T Seizure of protected objects

(1) In this section:

inspector has the same meaning as in the Act.

Minister means the Minister administering the Act.

the Act means the *Protection of Movable Cultural Heritage Act 1986*.

(2) Where:

(a) the Minister is of the opinion that a particular object may become forfeited by virtue of section 9 of the Act; or

(b) a foreign country has requested the return of a particular object exported from that country and the Minister is of the opinion that the object may become liable to forfeiture by virtue of section 14 of the Act;

the Minister may issue a notice in writing to the Comptroller-General of Customs to that effect.

(3) An officer may seize a protected object or any object that the officer believes on reasonable grounds is a protected object, being an object that is subject to customs control.

(4) Where an officer seizes an object under subsection (3), the officer shall forthwith deliver the object into the custody of an inspector.

204 Seized goods to be secured

(1) In this section:

approved place, in relation to goods, means a place approved by a Collector as a place for the storage of goods of that kind.

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(2) If an officer of Customs seizes any goods other than narcotic-related goods under a seizure warrant or under section 203B, 203CA or 203CB, the officer must, as soon as practicable, take those goods to an approved place.

(3) If a person other than an officer of Customs seizes any goods other than narcotic-related goods under a seizure warrant or under section 203B, 203CA or 203CB, the person must, as soon as practicable, deliver the goods into the custody of an officer of Customs.

(4) If a person other than a member of the Australian Federal Police seizes:

(a) any narcotic-related goods under a seizure warrant or under section 203B, 203CA or 203CB; or

(b) any narcotic goods under section 203C;

the person must, as soon as practicable, deliver the goods into the custody of a member of the Australian Federal Police.

(5) If goods are delivered to an officer of Customs under subsection (3), the officer must:

(a) if paragraph (b) does not apply—as soon as practicable, deliver the goods to an approved place; or

(b) if the goods are delivered to the officer at an approved place—leave the goods at that place.

205 Requirement to serve seizure notices

(1) After goods have been seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2), the responsible person must serve, within 7 days after the seizure, a seizure notice on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized.

(2) Subsection (1) applies whether or not a claim for the return of the goods seized has been made under section 205B.

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(3) The notice must be in writing and must be served:
  (a) personally or by post; or
  (b) if no person of the kind referred to in subsection (1) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.

(4) A seizure notice may be served on a person who is outside Australia.

(5) In this section:

responsible person means:
  (a) in relation to goods other than narcotic-related goods—the officer of Customs who seized the goods or to whom the goods were delivered under subsection 204(3); or
  (b) in relation to narcotic-related goods—the member of the Australian Federal Police who seized the goods or to whom the goods were delivered under subsection 204(4).

205A Matters to be dealt with in seizure notices

A seizure notice must set out the following:
  (a) a statement identifying the goods;
  (b) the day on which they were seized;
  (c) the ground, or each of the grounds, on which they were seized;
  (d) the effect of sections 205B and 205C; and
  (e) if the notice is to be served in a foreign country—a statement that the person served, if that person has not yet made a claim for the return of the goods, may not make such a claim unless he or she has first appointed in writing an agent in Australia with authority to accept service of documents, including process in any proceedings arising out of the matter.

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205B Claim for return of goods seized

(1) Subject to subsections (1A) and (1B), if goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2), the owner of the goods may, whether or not a seizure notice has yet been served on the owner, make a claim to the appropriate person for the return of the goods.

(1A) A claim may not be made for the return of goods that have been taken to be condemned as forfeited to the Crown under subsection 243Y(1).

(1B) Subsection (1A) ceases to apply in relation to the goods if subsection 243Y(1) ceases to apply in relation to the goods because of the operation of subsection 243Y(4).

(1C) A claim under subsection (1) may be made by document or electronically.

(2) A documentary claim:

(a) must be in writing in an approved form; and

(b) must specify the grounds on which the claim is made; and

(c) if it is made by a person who does not reside or have a place of business in Australia, must:

(i) appoint an agent in Australia with authority to accept service of documents, including process in any proceedings, arising out of the matter; and

(ii) specify the address of the agent for service; and

(iii) be accompanied by the written consent of the agent signed by the agent, agreeing to act as agent.

(2A) An electronic claim:

(a) must communicate such information as is set out in an approved statement; and

(b) must specify the grounds on which the claim is made; and

(c) if it is made by a person who does not reside or have a place of business in Australia, must:

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(i) appoint an agent in Australia with authority to accept service of documents, including process in any proceedings, arising out of the matter; and

(ii) specify the address of the agent for service; and

(iii) be accompanied by the written consent of the agent signed by the agent, agreeing to act as agent.

(3) In this section:

appropriate person means:

(a) in relation to goods other than narcotic-related goods—the Comptroller-General of Customs; and

(b) in relation to narcotic-related goods:

(i) the Commissioner of Police; or

(ii) a Deputy Commissioner of Police.

205C Treatment of goods seized if no claim for return is made

(1) If:

(a) goods have been seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2); and

(b) a seizure notice has been served; and

(c) at the end of 30 days after the day the notice was served, no claim has been made for the return of the goods and subsection 205B(1A) has not applied in relation to the goods;

the goods are taken to be condemned as forfeited to the Crown.

(2) If:

(a) goods have been seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2); and

(b) a seizure notice has been served; and

(c) an infringement notice for an offence in relation to the importation of the goods has been given; and

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(d) the penalty specified in the infringement notice is paid within the period within which, or by the time by which, the penalty is required to be paid; and

(e) the infringement notice is withdrawn and, as a result, subsection 205B(1A) ceases to apply in relation to the goods; and

(f) at the end of 30 days after the day notice of the withdrawal of the infringement notice is given to the person, no claim has been made for the return of the goods;

the goods are taken to be condemned as forfeited to the Crown.

205D Treatment of goods seized if a claim for return is made—general

(1) This section applies if:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2); and

(aa) a claim for the return of the goods may be made under section 205B; and

(b) before the end of the 30-day period referred to in paragraph 205C(1)(c) or (2)(f), a claim is made under section 205B for return of the goods.

(1A) However, this section does not apply in relation to goods seized on the belief or suspicion that they are a prohibited psychoactive substance.

(2) The authorised person who seized the goods must, subject to any law of the Commonwealth, a State or a Territory permitting their retention, destruction or disposal, return the goods unless:

(a) the goods have been dealt with under section 206 or 207; or

(aa) the goods have been taken to be condemned as forfeited to the Crown under subsection 243Y(1); or

(b) not later than 120 days after the claim for their return is made, proceedings in respect of an offence involving the goods have been commenced and, on completion of the

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proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or

(c) not later than 120 days after the claim for their return is made:

(i) an order permitting the goods to be retained for a specified period has been made under section 205E; and

(ii) before the end of that specified period, proceedings in respect of an offence involving the goods have been commenced and, on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or

(d) not later than 120 days after the claim for their return is made:

(i) an order permitting the goods to be retained for a specified period has been made under section 205E; and

(ii) before the end of that specified period proceedings have been commenced before a court of summary jurisdiction for a declaration that the goods are special forfeited goods and, on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or

(e) if the goods were seized as special forfeited goods—not later than 120 days after the claim for their return is made, proceedings before a court of summary jurisdiction for a declaration that the goods are special forfeited goods have been commenced and, on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(2A) Paragraph (2)(aa) ceases to apply in relation to the goods if subsection 243Y(1) ceases to apply in relation to the goods because of the operation of subsection 243Y(4).

(3) If:

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(a) goods seized otherwise than as special forfeited goods have not been dealt with under section 206; and

(b) proceedings of the kind referred to in paragraph (2)(b) or (c) are commenced in respect of an offence involving the goods; and

(c) on completion of the proceedings, the court:

(i) finds that the offence is proved; and

(ii) is satisfied, in all the circumstances of the case, that it is appropriate that an order be made for condemnation of the goods as forfeited to the Crown;

the court must make an order to that effect.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(4) If:

(a) goods seized as special forfeited goods have not been dealt with under section 206 or 207; and

(b) proceedings of the kind referred to in paragraph (2)(b) or (c) are commenced in respect of an offence involving the goods; and

(c) on completion of the proceedings, the court is satisfied that the goods are special forfeited goods;

the court must make an order for condemnation of the goods as forfeited to the Crown, whether or not the court finds the offence proved.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(5) Subject to subsection (6) if:

(a) goods seized as special forfeited goods have not been dealt with under section 206 or 207; and

(b) proceedings of the kind referred to in paragraph (2)(d) or (e) are commenced in respect of the goods; and

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(c) on completion of the proceedings, the court is satisfied that the goods are special forfeited goods;

the court must declare the goods to be special forfeited goods and make an order for condemnation of the goods as forfeited to the Crown.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(6) A court must not make an order for condemnation of goods under subsection (5) if proceedings for an offence involving the goods have been commenced.

(7) If the finding of a court in proceedings under paragraph (2)(b), (c), (d) or (e) in respect of goods that have not been dealt with under section 206 or 207 may be taken on appeal to another court, the goods are not to be returned under subsection (2), or disposed of under section 208D or 208DA, while that appeal may be made, or, if it is made, until the completion of that appeal.

(8) For the purposes of this section, the return of goods requires their return to the person reasonably believed to be the owner of the goods in a condition as near as practicable to the condition in which they were seized.

(9) In this section:

offence means an offence against any law of the Commonwealth, a State or a Territory.

special forfeited goods includes goods that are forfeited under section 7, 10, 11 or 13 of the *Commerce (Trade Descriptions) Act 1905*.

(10) In this section, a reference to completion of proceedings includes a reference to completion of any appeal process arising from those proceedings.

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205E Magistrate may permit goods seized to be retained

(1) If goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2) and:

(a) before the end of 120 days after the making of a claim for their return; or

(b) before the end of the period previously specified in a magistrate's order under this section;

proceedings of the kind referred to in paragraph 205D(2)(b) have not been started, an authorised person may apply to a magistrate for an order that the goods be retained.

(2) If the magistrate is satisfied that:

(a) it is necessary that the retention of the goods continue while evidence of the offence to which the proceedings referred to in paragraph 205D(2)(b) relate is assembled; and

(b) there has been no avoidable delay in assembling that evidence;

the magistrate may order that the goods be retained for a period specified in the order.

(3) Before making the application, the authorised person must:

(a) take reasonable steps to discover who has an interest in the retention of the goods; and

(b) if it is practicable to do so, notify each person who the officer believes to have such an interest of the proposed application.

(4) This section does not apply in relation to goods seized on the belief or suspicion that they are a prohibited psychoactive substance.

205EA Treatment of goods seized if a claim for return is made—suspected prohibited psychoactive substances

(1) This section applies if:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the goods are seized on belief or suspicion that they are a prohibited psychoactive substance; and

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(c) a claim for the return of the goods may be made under section 205B; and

(d) not later than 30 days after the day the seizure notice was served, a claim is made under section 205B for return of the goods.

(2) The authorised person who seized the goods must, subject to any law of the Commonwealth, a State or a Territory permitting their retention, destruction or disposal, return the goods unless:

(a) the goods have been dealt with under section 206; or

(b) not later than 30 days after the day the claim is made, the Comptroller-General of Customs gives the claimant a written notice stating that the goods will be condemned as forfeited if the claimant does not, within 30 days after receiving the notice, institute proceedings against the Commonwealth:

(i) to recover the goods; or

(ii) for a declaration that the goods are not forfeited.

(3) A notice under paragraph (2)(b):

(a) must be served personally or by post; and

(b) may be served on a person who is outside Australia.

(4) The goods are condemned as forfeited to the Crown if:

(a) the claimant does not institute proceedings of a kind referred to in paragraph (2)(b) within the period of 30 days after receiving the notice under that paragraph (or within that period as extended, or further extended, under section 205EB); or

(b) the claimant institutes such proceedings within that period (or within that period as extended or further extended), and at the end of the proceedings there is not:

(i) an order for the claimant to recover the goods; or

(ii) an order for the Commonwealth to pay the claimant the market value of the goods at the time they were disposed of or destroyed, if they have been disposed of or destroyed before the end of the proceedings; or

(iii) a declaration that the goods are not forfeited.

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(5) For the purposes of subsection (4), if the proceedings go to judgment, they end:
   (a) at the end of the period for lodging an appeal against the judgment, if no appeal is lodged within that period; or
   (b) when the appeal lapses or is finally determined, if an appeal is lodged against the judgment within that period.

(6) For the purposes of this section, the return of goods requires their return to the person reasonably believed to be the owner of the goods in a condition as near as practicable to the condition in which they were seized.

205EB Extending the period for instituting proceedings for recovery of suspected prohibited psychoactive substances

(1) A person who has been given a notice under paragraph 205EA(2)(b) in relation to goods may, before the end of the applicable period under paragraph 205EA(4)(a), apply to a magistrate for an extension, or a further extension, of the period.

(2) If the magistrate is satisfied that:
   (a) it is necessary that the retention of the goods continue while information is assembled relating to whether the goods are a prohibited psychoactive substance; and
   (b) there has been no avoidable delay in assembling that information;

the magistrate may order that the period be extended, or further extended, for a period specified in the order.

205EC Proceedings for recovery of suspected prohibited psychoactive substances

(1) Proceedings of a kind referred to in paragraph 205EA(2)(b) may be instituted or continued even if the goods to which the proceedings relate are disposed of or destroyed.

(2) In proceedings of a kind referred to in paragraph 205EA(2)(b):

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(a) the Commonwealth bears the onus of proving that the goods to which the proceedings relate were imported; and

(b) the person instituting the proceedings bears the onus of proving that the goods:

(i) are not a psychoactive substance; or

(ii) are a substance to which, because of subsection 320.2(2) of the *Criminal Code*, section 320.2 of the *Criminal Code* does not apply.

(3) If:

(a) the goods to which proceedings of a kind referred to in paragraph 205EA(2)(b) relates have been disposed of or destroyed before the end of the proceedings; and

(b) the court hearing the proceedings decides that, apart from the disposal or destruction, it would have ordered that the goods be returned to a person;

the court must order the Commonwealth to pay the person an amount equal to the market value of the goods at the time they were disposed of or destroyed.

205F Right of compensation in certain circumstances for goods disposed of or destroyed

(1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown because no claim for their return or recovery was made, a person may apply to a court of competent jurisdiction under this section for compensation.

(2) A right to compensation exists if:

(a) the goods are not special forfeited goods within the meaning of section 205D; and

(b) the goods were not used or otherwise involved in the commission of an offence; and

(c) the person establishes, to the satisfaction of the court:

(i) that he or she is the rightful owner of the goods; and

(ii) that there were circumstances providing a reasonable excuse for the failure to claim the goods before the end

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of the 30-day period referred to in paragraph 205C(1)(c) or (2)(f) (as the case may be).

(3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to:

(a) if the goods have been sold—the proceeds of the sale; and

(b) if the goods have been destroyed—the market value of the goods at the time of their destruction.

205G Effect of forfeiture

When goods are, or are taken to be, condemned as forfeited to the Crown, the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

206 Immediate disposal of certain goods

Perishable goods and live animals

(1) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the goods are perishable goods or live animals; and

(c) the Comptroller-General of Customs is satisfied that the retention of the goods would constitute:

(i) a danger to public health; or

(ii) if the goods are live animals—a danger to the health of other animals or a danger to plants or to agricultural produce;

the Comptroller-General of Customs may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

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Dangerous goods

(1A) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the Comptroller-General of Customs is satisfied that the retention of the goods would constitute a danger to public health or safety;

the Comptroller-General of Customs may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

Unseaworthy vessels

(2) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the goods are a vessel in the possession of an officer of Customs; and

(c) the Comptroller-General of Customs is satisfied that the vessel is so unseaworthy that its custody or maintenance is impracticable;

the Comptroller-General of Customs may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

Prohibited psychoactive substances, tobacco products and prohibited serious drug alternatives

(2A) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the Comptroller-General of Customs is satisfied that the goods are a prohibited psychoactive substance, tobacco products or a prohibited serious drug alternative;

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the Comptroller-General of Customs may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

Vaping goods

(2B) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the Comptroller-General of Customs is satisfied that the goods are vaping goods that are prohibited imports;

the Comptroller-General of Customs may cause the goods to be dealt with in such manner as the Comptroller-General considers appropriate (including the destruction of the goods).

Engineered stone

(2C) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the Comptroller-General of Customs is satisfied that the goods are engineered stone that is a prohibited import;

the Comptroller-General of Customs may cause the goods to be dealt with in such manner as the Comptroller-General considers appropriate (including the destruction of the goods).

Notice

(3) As soon as practicable, but not later than 7 days after the goods referred to in subsection (1), (1A), (2), (2A), (2B) or (2C) have been dealt with, the Comptroller-General of Customs must give or publish a notice in accordance with subsection (5).

(4) The notice must be in writing and must be served:

(a) personally or by post on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized; or

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(b) if no person of the kind referred to in paragraph (a) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.

(5) The notice must:
(a) identify the goods; and
(b) state that the goods have been seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2) and give the reason for the seizure; and
(c) state that the goods have been dealt with under subsection (1), (1A), (2), (2A), (2B) or (2C) and specify the manner in which they have been so dealt with and the reason for doing so; and
(d) set out the terms of subsection (6).

Right to recover market value of goods

(6) If goods are dealt with in accordance with subsection (1), (1A), (2), (2A), (2B) or (2C), the owner of the goods may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the goods at the time they were so dealt with.

(7) A right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1), (1A), (2), (2A), (2B) or (2C) exists if:
(a) the goods are not special forfeited goods within the meaning of section 205D; and
(b) the goods were not used or otherwise involved in the commission of an offence; and
(c) the owner of the goods establishes, to the satisfaction of the Court, that the circumstances for them to be so dealt with did not exist.

(8) If a person establishes a right to recover the market value of the goods at the time they were dealt with, the Court must order the

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payment by the Commonwealth of an amount equal to that value at that time.

207 Immediate disposal of narcotic goods

(1) If:

(a) goods are seized:

(i) under a seizure warrant; or

(ii) under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2); or

(iii) under section 67 of the *Maritime Powers Act 2013*; and

(b) the goods are reasonably believed by the Commissioner of Police or a Deputy Commissioner of Police to be special forfeited goods that are narcotic goods;

the Commissioner or Deputy Commissioner may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

(2) If goods are dealt with in accordance with subsection (1), the owner of the goods may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the goods at the time they were so dealt with.

(3) A right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) exists if:

(a) the goods are not special forfeited goods; and

(b) the goods were not used or otherwise involved in the commission of an offence; and

(c) the owner of the goods establishes, to the satisfaction of the Court, that the circumstances for them to be so dealt with did not exist.

(4) If a person establishes a right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) or (2), the Court must order the payment by the Commonwealth of an amount equal to that value at that time.

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208 Release of goods on security

(1) This section applies to goods:

(a) that have been seized under a seizure warrant; and

(b) that are not special forfeited goods; and

(c) that are not taken to be forfeited to the Crown under section 205C; and

(d) in respect of which proceedings have not yet been brought by the Commonwealth under section 205D.

(2) The owner of the goods may apply to a court of summary jurisdiction for an order that the goods be released to the owner on provision to the Comptroller-General of Customs of security for an amount determined by the court in accordance with subsection (4).

(3) In determining whether or not to order the release of the goods on provision of a security, the court may have regard to:

(a) the impact that the continued retention of the goods would have on the economic interests of third parties; and

(b) whether the continued retention of the goods would prevent the provision of services by third parties which would place at risk the health, safety or welfare of the community; and

(c) any other like matters that the court considers relevant.

(4) For the purposes of this section, the security to be provided in respect of the goods is security for an amount determined by the court that does not exceed the sum of:

(a) the market value of the goods at the time when the order is made; and

(b) the costs incurred by the Commonwealth for storage of the goods from the time of their seizure until the time of their release under this section;

reduced by the amount of any duty that has been paid on the goods.

(5) If the security is given, the Comptroller-General of Customs is to release the goods to the applicant.

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208C Service by post

For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a seizure notice under section 205 or a notice under subsection 206(3) on a person, such a notice posted as a letter addressed to that person at the last address of that person known to the sender shall be deemed to be properly addressed.

208D Disposal of forfeited goods

All goods seized under a seizure warrant, under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2) or under section 67 of the *Maritime Powers Act 2013* that are taken to be condemned as forfeited to the Crown under section 205C or that are so condemned under section 205D or 205EA shall be dealt with and disposed of in accordance with:

(a) in the case of goods other than narcotic-related goods—the directions of the Comptroller-General of Customs; or

(b) in the case of narcotic goods—the directions of the Commissioner of Police or a Deputy Commissioner of Police; or

(c) in the case of narcotic-related goods other than narcotic goods—in accordance with section 208DA.

208DA Disposal of narcotic-related goods other than narcotic goods

(1) In this section:

condemned goods means goods seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2):

(a) that are taken to be condemned as forfeited to the Crown under section 205C; or

(b) that are so condemned under section 205D.

Official Trustee means the Official Trustee in Bankruptcy.

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prescribed officer means an SES employee, or acting SES employee, in the Department.

(2) All condemned goods that are narcotic-related goods (other than narcotic goods) must, subject to any direction given under subsection (4) in relation to those goods, be transferred to the Official Trustee to be dealt with under subsection (3).

(3) Where goods are transferred to the Official Trustee under subsection (2), the Official Trustee must, as soon as practicable:

(a) if the goods are money—credit the amount of the money to the Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*; and

(b) if the goods are not money:

(i) sell or otherwise dispose of the goods; and

(ii) apply the proceeds of the sale or disposition in accordance with subsection (3A); and

(iii) credit an amount equal to the remainder of those proceeds to the Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*.

(3A) The proceeds of the sale or disposition of condemned goods transferred to the Official Trustee under subsection (2) must be applied in payment of:

(a) the Official Trustee's remuneration; and

(b) the other costs, charges and expenses of the kind referred to in section 243P that are payable to, or incurred by, the Official Trustee in connection with the sale or disposition; and

(c) if the goods were seized by, or delivered into the custody of, a member of the Australian Federal Police under a seizure warrant, or under section 203B, 203C, 203CA, 203CB or 204—the costs, charges and expenses incurred by, or on behalf of, the Commonwealth in connection with the transportation, storage, custody and control of the goods before their transferral to the Official Trustee.

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(4) If condemned goods consist of, or include, narcotic-related goods (other than narcotic goods), the Minister, or a prescribed officer authorised by the Minister for the purposes of this section, may, at any time before the condemned goods are transferred to the Official Trustee under subsection (2), direct that those narcotic-related goods be disposed of, or otherwise dealt with, as specified in the direction.

208E Sales subject to conditions

Where a ship or aircraft is sold under section 206 or sold or otherwise disposed of under section 208D, the ship or aircraft may be sold or disposed of subject to conditions, including, without limiting the generality of the foregoing:

(a) a condition that, before the expiration of a period specified in the condition, the ship or aircraft is to be exported from Australia; or

(b) a condition that, before the expiration of a period specified in the condition, the ship or aircraft is to be broken up.

209 Power to impound certain forfeited goods and release them on payment of duty and penalty

(1) This section applies to dutiable goods that are forfeited by virtue of paragraph 229(1)(a), (g), (o), (p), (q) or (qa) (including forfeited by virtue of the operation of any of those paragraphs and section 230), other than goods that are prohibited imports.

(2) Subject to subsection (3), an officer may impound goods instead of obtaining a seizure warrant to seize them if:

(a) the goods are in a Customs place; and

(b) either:

(i) the goods are goods to which this section applies; or

(ii) the officer has reason to believe that the goods are goods to which this section applies.

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(3) An officer must not exercise the power to impound goods under subsection (2) if, in the opinion of the officer, the amount of duty sought to be evaded in respect of the goods exceeds $5,000.

(4) Goods impounded under this section shall be taken to such place of security as the Collector directs.

(5) Where an officer impounds goods under this section, he or she shall as soon as is practicable, but not later than 7 days after the day on which the goods were impounded, serve on the owner of the goods, either personally or by post, a notice in writing:

(a) identifying:

(i) if the goods are an article—the article; or

(ii) if the goods consist of separate articles—each of those articles; or

(iii) in any other case—the goods;

and stating that the article, articles or goods have been impounded under subsection (2); and

(b) setting out the amount of duty demanded in respect of the article, each of the articles, or the goods, identified in the notice; and

(c) setting out the date on which the goods were impounded; and

(d) setting out the terms of, or adequate particulars of the provisions of, subsections (6) and (7); and

(e) specifying the address at which payment under subsection (6) may be made in respect of the goods.

(6) Where the owner of an article or goods identified in a notice served under subsection (5) pays to the Collector, at the address for payment shown in the notice and within 21 days after the day on which the notice was served, the duty demanded in respect of the article or goods (not being a payment under protest in accordance with section 167) together with an amount of penalty equal to:

(a) if the goods were found in the course of a search of the baggage of a person who has arrived in Australia from a place outside Australia—an amount specified in the notice, being an amount equal to the amount of that duty that, in the

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opinion of the officer issuing the notice, the owner has sought to evade; or

(b) if paragraph (a) does not apply to the goods—an amount specified in the notice, being an amount equal to twice the amount of that duty that, in the opinion of the officer issuing the notice, the owner has sought to evade;

the following provisions apply:

(c) the Collector shall authorize the delivery of the article or goods to the owner;

(d) the article ceases, or the goods cease, to be forfeited; and

(e) proceedings shall not be brought for an offence against this Act in relation to the importation of the article or goods.

(7) Where the owner of an article or goods identified in a notice served under subsection (5) does not pay duty and penalty in respect of the article or goods in accordance with subsection (6), the article or goods are taken:

(a) to have been seized under a seizure warrant at the end of 21 days after the notice is served; and

(b) to have been so seized by the officer who served the notice under subsection (5).

(9) Neither the Commonwealth nor an officer or other person is under any liability in relation to the impounding of any goods under this section for which there was reasonable cause.

(10) For the purpose of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post on the owner of goods of a notice under subsection (5), such a notice posted as a letter addressed to the owner at his or her last address known to the officer required to serve the notice shall be deemed to be properly addressed.

(11) A reference in this section to the baggage of a person who has arrived in Australia shall be read as including a reference to goods on his or her person or otherwise with him or her.

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(12) A reference in this section to a search of the baggage of a person shall be read as including a reference to a search of such part of the baggage of a person as is available for search at a particular time.

209A Destruction or concealment of evidential material or forfeited goods

A person must not:

(a) destroy, or render incapable of identification, a document or thing that is, or may be, evidential material or a forfeited good; or

(b) render illegible or indecipherable such a document or thing; or

(c) place or conceal on his or her body, or in any clothing worn by the person, such a document or thing;

with the intention of preventing it from being seized by an authorised person in the exercise of the person's powers under a search warrant, a seizure warrant or section 203B, 203C, 203CA or 203CB.

Penalty: Imprisonment for 2 years.

Subdivision GA—Dealing with goods in transit seized under a section 203DA warrant

209B Subdivision applies to seized transit goods

This Subdivision applies to goods that have been seized under a seizure warrant under section 203DA, except for goods seized under paragraph 203DB(1)(d) (which covers goods suspected of being special forfeited goods).

Note: For other kinds of seized goods, see Subdivision G.

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209C Seized goods to be secured

An officer of Customs who seizes any goods to which this Subdivision applies must, as soon as practicable, take the goods to a place approved by a Collector as a place for the storage of goods of that kind.

209D Requirement to serve seizure notices

(1) The officer must serve, within 7 days after the seizure, a seizure notice on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized.

(2) Subsection (1) applies whether or not an application for the return of the goods seized has been made under section 209F.

(3) The notice must be in writing and must be served:
  (a) personally or by post; or
  (b) if no person of the kind referred to in subsection (1) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.

(4) A seizure notice may be served on a person who is outside Australia.

209E Matters to be dealt with in seizure notices

A seizure notice must set out the following:
  (a) a statement identifying the goods;
  (b) the day on which they were seized;
  (c) the ground, or each of the grounds, on which they were seized;
  (d) a statement that, if an application for the return of the goods has not already been made, and is not made within 30 days

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after the day the notice is served, the goods will be taken to be condemned as forfeited to the Crown.

209F Application for return of seized goods

(1) The owner of the goods may, whether or not a seizure notice has yet been served on the owner, apply to a court of competent jurisdiction for the return of the goods.

(2) An application must be made no later than 30 days after a seizure notice is issued in respect of the goods.

(3) If the court finds that:

(a) the goods are not goods of the kind mentioned in subsection 203DA(1); and

(b) the goods were not used or otherwise involved in the commission of an offence against any law of the Commonwealth, a State or a Territory; and

(c) the person is the rightful owner of the goods;

the court must order that the goods be returned to the owner.

(4) Goods required to be so returned are required to be returned in a condition as near as practicable to the condition in which they were seized.

(5) If the court finds otherwise than as mentioned in subsection (3), the goods are condemned as forfeited to the Crown.

209G Status of goods seized if no application for return is made

If:

(a) a seizure notice has been served; and

(b) at the end of 30 days after the day on which the notice was served, no application has been made for return of the goods;

the goods are condemned as forfeited to the Crown.

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209H Right of compensation for certain goods disposed of or destroyed

(1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown because no application for their return was made, a person may apply to a court of competent jurisdiction under this section for compensation.

(2) A right to compensation exists if:
  (a) the goods are not goods of the kind mentioned in subsection 203DA(1); and
  (b) the goods were not used or otherwise involved in the commission of an offence against any law of the Commonwealth, a State or a Territory; and
  (c) the person establishes, to the satisfaction of the court:
    (i) that he or she is the rightful owner of the goods; and
    (ii) that there were circumstances providing a reasonable excuse for the failure to apply for the return of the goods not later than 30 days after the day the seizure notice was served.

(3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to:
  (a) if the goods have been sold—the proceeds of the sale; and
  (b) if the goods have been destroyed or otherwise disposed of—the goods' market value at the time of their destruction or disposal.

209I Effect of forfeiture

When goods are condemned as forfeited to the Crown under this Subdivision, the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

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209J Immediate disposal of unsafe goods

(1) If the Comptroller-General of Customs is satisfied that the retention of goods seized would constitute a danger to public health or safety, the Comptroller-General of Customs may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

(2) As soon as practicable, but not later than 7 days after the goods have been dealt with, the Comptroller-General of Customs must give or publish a notice in accordance with subsection (4).

(3) The notice must be in writing and must be served:

(a) personally or by post on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized; or

(b) if no person of the kind referred to in paragraph (a) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.

(4) The notice must:

(a) identify the goods; and

(b) state that the goods have been seized under a seizure warrant under section 203DA and give the reason for the seizure; and

(c) state that the goods have been dealt with under subsection (1) and specify the manner in which they have been so dealt with and the reason for doing so; and

(d) set out the terms of subsection (5).

(5) If goods are dealt with in accordance with subsection (1), the owner of the goods may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the goods at the time they were so dealt with.

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(6) A right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) exists if:

(a) the goods were not goods of the kind mentioned in subsection 203DA(1); and

(b) the goods were not used or otherwise involved in the commission of an offence against any law of the Commonwealth, a State or a Territory; and

(c) the owner of the goods establishes, to the satisfaction of the Court, that the circumstances for them to be so dealt with did not exist.

(7) If a person establishes a right to recover the market value of the goods at the time they were dealt with, the Court must order the payment by the Commonwealth of an amount equal to that value at that time.

209K Disposal of forfeited goods

(1) All goods that are condemned as forfeited to the Crown under this Subdivision must be dealt with and disposed of in accordance with the directions of the Comptroller-General of Customs.

(2) In particular, the Comptroller-General of Customs may direct that the goods be given to a relevant authority of a foreign country in order that the goods be used in an investigation or prosecution under the laws of that country.

(3) Subsection (2) does not limit the generality of subsection (1).

209L Service by post

For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a seizure notice under section 209D or a notice under subsection 209J(3) on a person, such a notice posted as a letter addressed to that person at the last address of that person known to the sender is taken to be properly addressed.

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Subdivision GB—Surrender of prescribed prohibited imports

209M Application of Subdivision

This Subdivision applies to goods that are prohibited imports of a kind prescribed by regulations made for the purposes of this section.

209N Surrender of goods

(1) An officer of Customs may, instead of seizing goods under section 203B, permit a person to surrender the goods to the officer in a section 234AA place if:

(a) the officer has reasonable grounds to believe that the goods:

(i) have been imported by the person; and

(ii) have not been concealed from the officer by the person; and

(iii) are accompanied personal or household effects of the person; and

(b) the person has been informed by the officer, in writing, of the available options for dealing with the goods and the consequences of exercising each of those options; and

(c) the person has indicated to the officer, in writing, that he or she intends to surrender the goods; and

(d) the officer has indicated to the person that the goods may be surrendered to the officer.

(2) Without limiting the meaning of ***concealed*** in subparagraph (1)(a)(ii), a person is taken to have concealed goods from an officer of Customs if the person was required to give information about the goods to the Department in accordance with section 71, 71K or 71L and the person failed to do so.

209P Effect of surrender

If goods are surrendered under section 209N:

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(a) proceedings cannot be brought for an offence against this Act in relation to the importation of the goods; and

(b) the goods are taken to be condemned as forfeited to the Crown, such that the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

209Q Right of compensation in certain circumstances for goods disposed of or destroyed

(1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown because the goods have been surrendered under section 209N, a person may apply to a court of competent jurisdiction under this section for compensation.

(2) A right to compensation exists if:

(a) the goods were not prohibited imports; and

(b) the goods were not used or otherwise involved in the commission of an offence; and

(c) the person establishes, to the satisfaction of the court, that he or she is the rightful owner of the goods.

(3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to the market value of the goods at the time of their disposal or destruction.

209R Disposal of surrendered goods

All goods surrendered under section 209N must be dealt with and disposed of in accordance with the directions of the Comptroller-General of Customs.

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Subdivision GC—Post-importation permission

209S Definitions

(1) In this Subdivision:

application period, for goods that have been detained under section 209U, means the period that, in accordance with subparagraph 209X(1)(d)(i), is specified in the detention notice identifying the goods.

detention notice means a notice of the kind mentioned in section 209X.

grant period, for goods that have been detained under section 209U, means the period that, in accordance with subparagraph 209X(1)(d)(ii), is specified in the detention notice identifying the goods.

(2) If regulations made under section 50 provide that the importation of goods is prohibited unless a licence, permission, consent, approval or other document (however described) is granted or given, then the licence, permission, consent, approval or other document is a ***required permission to import the goods***.

209T Application of Subdivision

This Subdivision applies to goods that are prohibited imports of a kind prescribed by regulations made for the purposes of this section.

209U Power to detain goods

(1) An officer of Customs may, instead of seizing goods under section 203B, detain the goods if:

(a) the goods have been imported without one or more required permissions to import the goods having been granted or given; and

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(b) any other conditions or restrictions specified in regulations made under section 50 in respect of the importation of the goods have been complied with; and

(c) the officer has reasonable grounds to believe that:

(i) the goods have not been concealed from the officer by the person who imported them; and

(ii) no application for any of the required permissions to import the goods has previously been refused; and

(d) if the goods are accompanied personal or household effects of the person—the person:

(i) has been informed by the officer, in writing, of the available options for dealing with the goods and the consequences of exercising each of those options; and

(ii) has indicated to the officer, in writing, that he or she has applied, or intends to apply, for each of the required permissions to import the goods that have not already been granted or given.

(2) Without limiting the meaning of ***concealed*** in subparagraph (1)(c)(i), a person is taken to have concealed goods from an officer of Customs if the person was required to give information about the goods to the Department in accordance with section 71, 71K or 71L and the person failed to do so.

209V Detained goods to be secured

(1) In this section:

approved place, in relation to goods detained under section 209U, means a place approved by a Collector as a place for the storage of goods of that kind.

(2) If an officer of Customs detains goods under section 209U, the officer must, as soon as practicable, take those goods to an approved place.

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209W Requirement to serve detention notice

(1) If an officer of Customs detains goods under section 209U, the officer must serve, within 7 days after the day on which the goods were detained, a detention notice on:

(a) the owner of the goods; or

(b) if the owner cannot be identified after reasonable inquiry—the person in whose possession or under whose control the goods were when they were detained.

(2) The notice must be in writing and must be served:

(a) personally or by post; or

(b) if no person of the kind referred to in paragraph (1)(a) or (b) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were detained.

(3) A detention notice may be served on a person who is outside Australia.

209X Matters to be dealt with in detention notices

(1) A detention notice must set out the following:

(a) a statement identifying the goods;

(b) the day on which the goods were detained;

(c) the ground, or each of the grounds, on which the goods were detained;

(d) a statement that the goods will be taken to be seized if:

(i) written evidence of the making of an application for each required permission to import the goods that was not granted, or given, by the time the goods were imported is not provided to the Department by the end of a specified period (the ***application period***); or

(ii) not all of the required permissions to import the goods are granted, or given, by the end of a specified period (the ***grant period***); or

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(iii) during the application period or the grant period, the owner of the goods notifies the Department, in writing, that an application for a required permission to import the goods has been refused;

(e) a statement that, if the goods are taken to be seized because written evidence is not provided to the Department by the end of the application period, the goods will be taken to be seized on the day after the end of the application period;

(f) a statement that, if the goods are taken to be seized because not all of the required permissions to import the goods are granted, or given, by the end of the grant period, the goods will be taken to be seized on the day after the end of the grant period;

(g) a statement that, if the goods are taken to be seized because during the application period or the grant period the owner of the goods notifies the Department, in writing, that an application for a required permission to import the goods has been refused, the goods will be taken to be seized on the day after the Department is so notified;

(h) the ground, or each of the grounds, on which the goods will be taken to be seized;

(i) a statement that, if the goods are taken to be seized and a claim for the return of the goods has not already been made, and is not made within 30 days after the day the goods are taken to be seized, the goods will be taken to be condemned as forfeited to the Crown;

(j) if the notice is to be served in a foreign country—a statement that the person served, if that person has not yet made a claim for the return of the goods, may not make such a claim unless he or she has first appointed in writing an agent in Australia with authority to accept service of documents, including process in any proceedings arising out of the matter.

(2) The application period specified in a detention notice under subparagraph (1)(d)(i) must be the period that:

(a) starts on the day that the notice is served; and

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(b) ends 30 days, or such other period as is prescribed by the regulations, after that day.

(3) The grant period specified in a detention notice under subparagraph (1)(d)(ii) must be the period that:

(a) starts on the day written evidence of the making of an application for a required permission to import the goods is first provided to the Department; and

(b) ends 30 days, or such other period as is prescribed by the regulations, after the first day on which written evidence of the making of an application for all of the required permissions to import the goods that were not granted, or given, by the time the goods were imported has been provided to the Department.

209Y Effect of detaining goods

While goods are detained under section 209U:

(a) an application for a required permission to import the goods may be made; and

(b) a required permission to import the goods may be granted or given;

despite the goods having already been imported.

209Z Evidence not provided or permission not granted or given

(1) This section applies if:

(a) goods have been detained under section 209U; and

(b) a detention notice identifying the goods has been served; and

(c) any of the following apply:

(i) written evidence of the making of an application for each required permission to import the goods that was not granted, or given, by the time the goods were imported has not been provided to the Department by the end of the application period for the goods;

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(ii) not all of the required permissions to import the goods have been granted, or given, by the end of the grant period for the goods;

(iii) during the application period, or the grant period, for the goods, the owner of the goods has notified the Department, in writing, that an application for a required permission to import the goods has been refused.

(2) If the goods are at an approved place within the meaning of section 209V, they cease to be detained under section 209U and are taken to be seized under section 203B on:

(a) if, during the application period, the owner of the goods notified the Department, in writing, that an application for a required permission to import the goods was refused—the day after the Department was so notified; or

(b) if paragraph (a) does not apply and written evidence of the making of an application for each required permission to import the goods that was not granted, or given, by the time the goods were imported was not provided to the Department by the end of the application period—the day after the end of the application period; or

(c) if paragraphs (a) and (b) do not apply and, during the grant period, the owner of the goods notified the Department, in writing, that an application for a required permission to import the goods was refused—the day after the Department was so notified; or

(d) if paragraphs (a), (b) and (c) do not apply and not all of the required permissions to import the goods were granted, or given, by the end of the grant period—the day after the end of the grant period.

(3) The detention notice is also taken to be a seizure notice that:

(a) is in accordance with section 205A; and

(b) was served:

(i) under section 205 by the responsible person; and

(ii) on the day the goods are taken to be seized.

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209ZA Evidence provided and permission granted or given

(1) This section applies if:

(a) goods have been detained under section 209U; and

(b) a detention notice identifying the goods has been served; and

(c) written evidence of the making of an application for each required permission to import the goods that was not granted, or given, by the time the goods were imported has been provided to the Department by the end of the application period for the goods; and

(d) all of the required permissions to import the goods have been granted, or given, on or before the end of the grant period for the goods.

(2) An officer of Customs must return the goods to the owner.

(3) At the time the last required permission to import the goods is granted or given, the goods cease to be prohibited imports.

(4) Proceedings cannot be brought for an offence against this Act in relation to the importation of the goods.

209ZB Service by post

For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a detention notice under this Subdivision on a person, such a notice posted as a letter addressed to that person at the last address of that person known to the sender is taken to be properly addressed.

209ZC Liability for detention of goods

Neither the Commonwealth nor an officer or other person is under any liability in relation to the detention of any goods under this Subdivision for which there was reasonable cause.

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Subdivision H—Arrest and related matters

210 Power of arrest without warrant

(1) An officer of Customs or police may without warrant arrest a person if the officer believes on reasonable grounds that:

(a) the person has committed or is committing one or more of the following offences:

(i) an offence against subsection 33(1) or 33(5);

(ii) an offence against section 33C, 231 or 233;

(iii) an offence against subsection 233BAA(4) or (5), 233BAB(5) or (6), 233BABAB(1), 233BABAC(1) or 233BABAD(1), (2), (2A) or (2B);

(iv) an offence against section 72.13 or Division 307 or 361 of the *Criminal Code*;

(v) an offence against section 308.2 of the *Criminal Code* where the substance involved in the offence is reasonably suspected of having been imported into Australia, or being intended for export from Australia, in contravention of this Act;

(vi) an offence against section 147.1, 147.2 or 149.1 of the *Criminal Code* in relation to an officer of Customs;

(vii) an offence against a provision in Subdivision 308-A in Schedule 1 to the *Taxation Administration Act 1953*; and

(b) proceedings by summons against the person would not achieve one or more of the following purposes:

(i) ensuring the appearance of the person before a court in respect of the offence;

(ii) preventing a repetition or continuation of the offence or the commission of another offence;

(iii) preventing the concealment, loss or destruction of evidence relating to the offence;

(iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;

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(v) preventing the fabrication of evidence in respect of the offence;

(vi) preserving the safety or welfare of the person.

(2) A person commits an offence if the person resists, obstructs or prevents the arrest of any person under this section.

Penalty: 10 penalty units.

(3) If:

(a) a person has been arrested for an offence under subsection (1); and

(b) before the person is charged with the offence, the officer of Customs or police in charge of the investigation ceases to believe on reasonable grounds:

(i) that the person committed the offence; or

(ii) that holding the person in custody is necessary to achieve a purpose referred to in paragraph (1)(b);

the person must be released.

(4) An officer of Customs or police may without warrant arrest a person whom he or she believes on reasonable grounds has escaped from lawful custody to which the person is still liable under this Subdivision.

210A Use of force in making arrest

(1) An officer of Customs or police must not, in the course of arresting a person under section 210, use more force, or subject the person to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the person after the arrest.

(2) Without limiting the operation of subsection (1), an officer of Customs or police must not, in the course of arresting a person under section 210, do anything that is likely to cause the death of, or grievous bodily harm to, the person unless:

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(a) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); or

(b) if the person is attempting to escape arrest by fleeing:

(i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); and

(ii) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other manner.

210B Person to be informed of grounds of arrest

(1) An officer of Customs or police who arrests a person under section 210 must inform the person, at the time of the arrest, of the offence for which the person is being arrested.

(2) It is sufficient if the person is informed of the substance of the offence, and it is not necessary that this be done in language of a precise or technical nature.

(3) Subsection (1) does not apply to the arrest of the person if:

(a) the person should, in the circumstances, know the substance of the offence for which he or she is being arrested; or

(b) the person's actions make it impracticable for the officer to inform the person of the offence for which he or she is being arrested.

211 Power to conduct a frisk search of an arrested person

An officer of Customs or police who arrests a person under section 210, or who is present at such an arrest, may, if the officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items:

(a) conduct a frisk search of the person at or soon after the time of arrest; and

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(b) seize any seizable items found as a result of the search.

211A Power to conduct an ordinary search of an arrested person

An officer of Customs or police who arrests a person under section 210, or who is present at such an arrest, may, if the officer suspects on reasonable grounds that the person is carrying:

(a) evidential material in relation to the offence for which the person is arrested or another offence; or

(b) a seizable item;

conduct an ordinary search of the person at or soon after the time of arrest, and seize any such thing found as a result of the search.

212 How arrested person to be dealt with

An officer of Customs who arrests a person under section 210 must ensure that the person is either:

(a) delivered into the custody of a police officer; or

(b) taken before a magistrate or bail justice;

as soon as practicable to be dealt with according to law.

213 Requirement to provide name etc.

(1) An officer of Customs or police may request a person arrested under section 210 to provide his or her name or address, or name and address, to the officer if the person's name or address is, or name and address are, unknown to the officer.

(2) A person commits an offence if:

(a) an officer of Customs or police:

(i) has made a request of a person under subsection (1); and

(ii) has complied with any request that the person has made under paragraph (4)(b); and

(b) the person refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

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(3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) An officer of Customs or police commits an offence if:

(a) the officer makes a request of a person under subsection (1); and

(b) the person requests the officer to provide to the person:

(i) his or her name or the address of his or her place of duty; or

(ii) his or her name and that address; or

(iii) if he or she is not in uniform and it is practicable for the officer to provide the evidence—evidence that he or she is an officer; and

(c) the officer refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

Subdivision HA—Information about people working in restricted areas or issued with security identification cards

213A Providing an authorised officer with information about people working in restricted areas

(1) A person who employs or engages a restricted area employee must, within 7 days after doing so, provide to an authorised officer the required identity information in respect of the employee.

(2) If a person (the ***employer***):

(a) employs or engages another person after the commencement of this section; and

(b) at a later time the other person becomes a restricted area employee of the employer;

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the employer must, within 7 days after that later time, provide to an authorised officer the required identity information in respect of the employee.

(3) If:

(a) a person (the ***employer***) employed or engaged another person before the commencement of this section; and

(b) the other person is a restricted area employee of the employer; and

(c) an authorised officer suspects on reasonable grounds that the other person has committed, or is likely to commit, an offence against a law of the Commonwealth;

the authorised officer may, in writing, request the employer to provide to the authorised officer, within 7 days after receiving the request, the required identity information in respect of the employee. The employer must comply with the request.

(4) A person does not comply with an obligation under subsection (1), (2) or (3) to provide information unless the person provides the information:

(a) in writing; or

(b) in such other form as the Comptroller-General of Customs determines in writing.

(5) A person commits an offence if the person fails to comply with subsection (1), (2) or (3).

Penalty: 30 penalty units.

(6) Subsection (5) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(7) In this section:

required identity information, in relation to a person, means any one or more of the following:

(a) the name and address of the person;

(b) the person's date and place of birth;

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(c) any other information prescribed by the regulations.

restricted area employee means a person whose duties include working in an area covered by a notice under subsection 234AA(3), but does not include a person who is issued with a security identification card.

security identification card means a card of a kind specified in the regulations.

213B Provision of information about people issued with security identification cards

(1) If a person has issued a security identification card to another person in respect of an airport appointed under section 15, an issuing authority in relation to the card must, within 7 days after the card is issued, provide to an authorised officer the required identity information in respect of the other person.

(2) If:

(a) before the commencement of this section, a person issued a security identification card to another person in respect of an airport appointed under section 15; and

(b) an authorised officer suspects on reasonable grounds that the other person has committed, or is likely to commit, an offence against a law of the Commonwealth;

the authorised officer may, in writing, request an issuing authority in relation to the card to provide to the authorised officer, within 7 days after receiving the request, the required identity information in respect of the other person. The issuing authority must comply with the request.

(2A) If a person has issued a security identification card to another person in respect of an airport appointed under section 15, an authorised officer may, at any time, in writing, request an issuing authority in relation to the card to provide to the authorised officer, within 7 days after receiving the request, information for the purposes of updating required identity information previously

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provided in respect of the other person under subsection (1) or this subsection. The issuing authority must comply with the request.

(2B) If a security identification card expires or is revoked, an issuing authority in relation to the card must notify an authorised officer of the expiry or revocation within 7 days after it occurs.

(3) A person does not comply with an obligation under subsection (1), (2), (2A) or (2B) to provide information unless the person provides the information:

(a) in writing; or

(b) in such other form as the Comptroller-General of Customs determines in writing.

(4) In this section:

issuing authority, in relation to a security identification card, means any of the following:

(a) the person who issued the card;

(b) a person who is authorised to perform the functions, or exercise the powers, of the person who issued the card.

required identity information has the meaning given by section 213A.

security identification card has the meaning given by section 213A.

Subdivision J—General powers to monitor and audit

214AA Occupier of premises

In this Subdivision:

occupier of premises includes a person who is apparently in charge of the premises.

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214AB What are *monitoring powers*?

Monitoring powers

(1) For the purposes of this Subdivision, the following are ***monitoring powers***:

(a) the power to search premises;

(b) the power to take photographs (including a video recording), or make sketches, of premises or anything at premises;

(c) the power to inspect, examine, count, measure, weigh, gauge, test or analyse, and take samples of, anything in or on premises;

(d) the power to inspect any document or record in or on premises;

(e) the power to take extracts from, or make copies of, any document or record in or on premises;

(f) the power to take into or onto premises any equipment or material reasonably necessary for the purpose of exercising a power under paragraph (a), (b), (c), (d) or (e);

(g) the power to test and operate record-keeping, accounting, computing or other operating systems of any kind that are at premises and may be used to generate or record information or documents of a kind that may be communicated to the Department;

(h) the power to secure a thing that:

(i) is found during a search of premises; and

(ii) a monitoring officer believes on reasonable grounds affords evidence of the commission of an offence against a Customs-related law and may be lost, destroyed or tampered with;

until a warrant is obtained to seize the thing or 72 hours elapses after the securing of the thing, whichever first occurs;

(i) the powers in subsections (2) and (3).

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Power to operate equipment to check information

(2) For the purposes of this Subdivision, ***monitoring powers*** include the power to operate equipment at premises to see whether:

(a) the equipment; or

(b) a disk, tape or other storage device that:

(i) is at the premises; and

(ii) can be used with the equipment or is associated with it;

contains information that is relevant to assessing:

(c) whether a person is complying with a Customs-related law; or

(d) whether a person's record-keeping, accounting, computing or other operating systems of any kind accurately record and generate information to enable compliance with a Customs-related law; or

(e) the correctness of information communicated by a person to the Department (whether in documentary or other form).

Power to copy information found by operating equipment

(3) For the purposes of this Subdivision, ***monitoring powers*** include the following powers in relation to information described in subsection (2) that is found in the exercise of the power under that subsection:

(a) the power to operate facilities at the premises to put the information in documentary form and copy the documents so produced;

(b) the power to operate facilities at the premises to transfer the information to a disk, tape or other storage device:

(i) that is brought to the premises for the exercise of the power; or

(ii) that is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;

(c) the power to remove from the premises a disk, tape or other storage device to which the information has been transferred in exercise of the power under paragraph (b).

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214AC Monitoring officers

*Who is a **monitoring officer**?*

(1) A ***monitoring officer*** is an officer who is authorised by the Comptroller-General of Customs under this section to enter premises and exercise monitoring powers (whether the authorisation applies generally, during a specified period or in or on specified premises).

Who may be authorised to be a monitoring officer

(2) The Comptroller-General of Customs must not authorise an officer to enter premises and exercise monitoring powers unless the Comptroller-General of Customs is satisfied that the officer is suitably qualified, because of the officer's abilities and experience, to exercise those powers.

Authorising officers to exercise monitoring powers

(3) The Comptroller-General of Customs may authorise in writing an officer to enter premises and exercise monitoring powers:
  (a) generally; or
  (b) during a specified period; or
  (c) in or on specified premises; or
  (d) during a specified period in or on specified premises.

Availability of assistance and use of force in exercising monitoring powers

(4) In entering premises and exercising monitoring powers:
  (a) a monitoring officer may obtain such assistance; and
  (b) a monitoring officer or a person assisting a monitoring officer may use such force against things;

as is necessary and reasonable in the circumstances.

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Monitoring powers to be used only as authorised

(5) This Subdivision does not allow:

(a) an officer who is authorised to enter premises and exercise monitoring powers during a specified period to enter the premises or exercise the powers at a time outside that period; or

(b) an officer who is authorised to enter, and exercise monitoring powers in or on, specified premises to enter, or to exercise the powers in or on, other premises.

214ACA Monitoring officer to notify occupier of premises of the occupier's rights and obligations

Before exercising monitoring powers in respect of premises, a monitoring officer must give to the occupier of the premises a written notice setting out the occupier's rights and obligations under this Subdivision.

214AD Notice of proposal to exercise monitoring powers

Before seeking consent under section 214AE to enter premises and exercise monitoring powers there, a monitoring officer may give to the occupier of the premises written notice stating that the officer wishes to enter the premises and exercise monitoring powers and specifying the period from the giving of the notice during which the officer wishes to exercise the powers.

Note: If the occupier had, before a notice is given under section 214AD, made to the Department a statement that was false or misleading, a voluntary notification made by the occupier after the notice is given is not a defence to a prosecution for an offence against section 243T or 243U in respect of the statement.

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214AE Exercise of monitoring powers with consent

(1) A monitoring officer may enter, and exercise monitoring powers in or on, premises to the extent that it is reasonably necessary for the purpose of assessing:

(a) whether a person is complying with a Customs-related law; or

(b) whether a person's record-keeping, accounting, computing or other operating systems of any kind accurately record and generate information to enable compliance with a Customs-related law; or

(c) the correctness of information communicated by a person to the Department (whether in documentary or other form).

(2) However, a monitoring officer must not enter premises under this section unless the occupier of the premises has consented to the monitoring officer entering, and exercising monitoring powers in or on, the premises.

(3) Before obtaining such a consent, a monitoring officer must tell the occupier of the premises that he or she can refuse consent.

(4) A consent may be expressed to be limited to entry to, and the exercise of monitoring powers in or on, the premises to which the consent relates during a particular period unless the consent is withdrawn before the end of that period.

(5) A consent that is not limited as mentioned in subsection (4) has effect in relation to any entry to, and any exercise of monitoring powers in or on, the premises to which the consent relates until the consent is withdrawn.

(6) Before a monitoring officer enters premises or exercises any monitoring powers, he or she must produce his or her identity card to the occupier.

(7) A monitoring officer must leave the premises if the occupier withdraws the consent.

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(8) A consent, or a withdrawal of consent, does not have effect unless the consent or withdrawal is in writing.

214AF Exercise of monitoring powers under a warrant

(1) A monitoring officer may apply to a magistrate for a warrant under this section in relation to particular premises.

(2) The magistrate must issue a warrant if satisfied, by information on oath or affirmation, that it is reasonably necessary that the monitoring officer should have access to the premises for the purpose of assessing:

(a) whether a person is complying with a Customs-related law; or

(b) whether a person's record-keeping, accounting, computing or other operating systems of any kind accurately record and generate information to enable compliance with a Customs-related law; or

(c) the correctness of information communicated by a person to the Department (whether in documentary or other form).

(3) If the magistrate requires further information about the grounds on which the issue of the warrant is applied for, he or she must not issue the warrant until the monitoring officer or someone else has given the magistrate the further information, either orally (on oath or affirmation) or by affidavit.

(4) The warrant must:

(a) state the purpose for which the warrant is issued; and

(b) identify the premises to which the warrant relates; and

(c) name the monitoring officer who is responsible for executing the warrant; and

(d) authorise any monitoring officer named in the warrant to enter the premises and exercise monitoring powers from time to time while the warrant remains in force, with such assistance, and using such force against things, as are necessary and reasonable; and

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(e) state the hours during which entry under the warrant is authorised to be made; and

(f) specify the day (not more than 6 months after the day of issue of the warrant) on which the warrant ceases to have effect.

(5) A magistrate in a particular State or Territory may issue a warrant in respect of premises in another State or Territory.

214AG Warrants may be granted by telephone or other electronic means

(1) A monitoring officer may apply to a magistrate for a warrant in relation to premises by telephone, telex, fax or other electronic means (of any kind):

(a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.

(3) An application under this section must include all information required to be provided in an application for a warrant under section 214AF but the application may, if necessary, be made before the information is sworn.

(4) The magistrate must complete and sign the same form of warrant used under section 214AF as soon as he or she:

(a) has considered the information included in the application under this section, and the further information (if any) required by him or her; and

(b) is satisfied that:

(i) a warrant in the terms of the application should be issued urgently; or

(ii) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

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(5) If the magistrate decides to issue the warrant, the magistrate is to tell the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day and time when it was signed.

(6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day and time when the warrant was signed.

(7) The applicant must give or send to the magistrate the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn. The applicant must do so not later than the day after the earlier of the following days:

(a) the day of expiry of the warrant;

(b) the day on which the warrant was first executed.

(8) The magistrate is to attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.

(9) If:

(a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and

(b) the form of warrant signed by the magistrate is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

214AH Monitoring officer may ask questions

(1) If a monitoring officer is in or on premises that he or she entered with the consent of the occupier of the premises, the officer may request the occupier to answer any questions put by the monitoring officer, but the occupier is not obliged to comply with the request.

(2) If a monitoring officer is in or on premises that he or she has entered under a warrant issued under section 214AF or 214AG, the

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officer may require any person on the premises to answer any questions put by the monitoring officer.

Note: Failure to answer a question put under this subsection may be an offence. See section 243SA.

214AI Monitoring officer may ask for assistance

(1) If a monitoring officer is in or on premises that he or she entered with the consent of the occupier of the premises under section 214AE, the officer may request the occupier to provide reasonable assistance to the officer at any time while the officer is entitled to remain in or on the premises, but the occupier is not obliged to comply with the request.

(2) If a monitoring officer is in or on premises that he or she entered under a warrant issued under section 214AF or 214AG, the officer may require the occupier to provide reasonable assistance to the officer at any time while the officer is entitled to remain on the premises.

(3) The monitoring officer may request or require the assistance for the purpose of the exercise of monitoring powers by the officer in relation to the premises.

(4) A person must not fail to comply with a requirement made of the person under subsection (2).

Penalty: 30 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

214AJ Compensation for damage to electronic equipment

(1) This section applies if:

(a) damage is caused to equipment as a result of it being operated as mentioned in subsection 214AB(2); or

(b) the data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;

because:

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(c) insufficient care was exercised in selecting the person who was to operate the equipment; or

(d) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay to the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as they agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings against the Commonwealth in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1), ***damage to data*** includes damage by erasure of data or addition of other data.

214B Powers of officers for purposes of *Customs Tariff (Anti-Dumping) Act 1975*

(1) For the purposes of the *Customs Tariff (Anti-Dumping) Act 1975* an authorized officer may, at all reasonable times, enter premises where there are kept any accounts, books or other records relating to goods exported to Australia or manufactured or produced, or sold, in Australia and may inspect any such accounts, books, documents or other records and make and retain copies of, or take and retain extracts from, any such accounts, books, documents or other records.

(2) Where an authorized officer proposes to enter any premises under subsection (1), he or she shall, if requested to do so by the occupier

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or person in charge of the premises, produce for inspection written evidence of the fact that he or she is an authorized officer and, if he or she fails to do so, he or she is not authorized to enter the premises.

(3) The occupier or person in charge of premises referred to in subsection (1) shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his or her powers under subsection (1).

Penalty: 10 penalty units.

(4) An authorized officer may, by notice signed by him or her, require a person whom he or she believes to be capable of giving information that is relevant to the operation of the *Customs Tariff (Anti-Dumping) Act 1975* and relates to goods exported to Australia or manufactured or produced, or sold, in Australia to attend before him or her at the time and place specified in the notice and there to answer questions and produce to him or her such accounts, books, documents or other records in relation to goods exported to Australia or manufactured or produced, or sold, in Australia as are referred to in the notice.

(5) An authorized officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced in pursuance of subsection (4).

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(6) A person is not excused from answering a question or producing any accounts, books, documents or other records when required to do so under subsection (4) on the grounds that the answer to the question, or the production of the accounts, books, documents or other records, might tend to incriminate the person or make him or her liable to a penalty, but the person's answer to any such question or the production by him or her of any such accounts, books, documents or other records is not admissible in evidence against him or her in proceedings other than proceedings for an offence against this section or proceedings in respect of the falsity of any such answer.

(7) An authorized officer may examine, on oath or affirmation, a person attending before him or her in pursuance of subsection (4) and, for that purpose, may administer an oath or affirmation to that person.

(8) The oath or affirmation to be made by a person for the purposes of subsection (7) is an oath or affirmation that the answers he or she will give to questions asked of him or her will be true.

(9) A person shall not refuse or fail:

(a) to attend before an authorized officer; or

(b) to make an oath or an affirmation; or

(c) to answer a question or produce an account, book, document or other record;

when so required in pursuance of this section.

Penalty: 10 penalty units.

(10) Subsection (9) does not apply if the person has a reasonable excuse.

Subdivision JA—Powers to monitor and audit—Australia-United States Free Trade Agreement

214BAA Simplified outline

The following is a simplified outline of this Subdivision:

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- This Subdivision allows certain officers (***verification officers***) to enter premises, and to exercise certain powers (***AUSFTA verification powers***) in or on the premises, for the purpose of verifying information relating to the export, production or transportation of textile and clothing goods that are exported to the US.
- However, verification officers may only enter premises under this Subdivision with the occupier's consent.
- In entering premises and exercising AUSFTA verification powers, verification officers may be accompanied by US customs officials, but only with the occupier's consent.

214BAB Definitions

In this Subdivision:

Agreement means the Australia-United States Free Trade Agreement done at Washington DC on 18 May 2004, as amended from time to time.

Note: In 2004 the text of the Agreement was accessible through the website of the Department of Foreign Affairs and Trade.

AUSFTA verification powers has the meaning given by section 214BAC.

Harmonized System has the same meaning as in section 153YA.

occupier of premises includes a person who is apparently in charge of the premises.

textile and clothing goods means goods that are classified to:

(a) subheading 4202.12, 4202.22, 4202.32 or 4202.92 of Chapter 42 of the Harmonized System; or
(b) any of Chapters 50 to 63 of the Harmonized System; or
(c) heading 7019 of Chapter 70 of the Harmonized System; or

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(d) subheading 9409.90 of Chapter 94 of the Harmonized System.

US means the United States of America.

US customs official means a person representing the customs administration of the US.

verification officer means a person authorised under section 214BAD to enter premises and to exercise AUSFTA verification powers.

214BAC AUSFTA verification powers

(1) For the purposes of this Subdivision, the following are the ***AUSFTA verification powers***:

(a) the power to search premises;

(b) the power to take photographs (including a video recording), or make sketches, of premises or anything at premises;

(c) the power to inspect, examine, count, measure, weigh, gauge, test or analyse, and take samples of, anything in or on premises;

(d) the power to inspect any document or record in or on premises;

(e) the power to take extracts from, or make copies of, any document or record in or on premises;

(f) the power to take into or onto premises any equipment or material reasonably necessary for the purpose of exercising a power under paragraph (a), (b), (c), (d) or (e);

(g) the power to test and operate record-keeping, accounting, computing or other operating systems of any kind that are at premises and may be used to generate or record information or documents of a kind that may be communicated to the Department;

(h) the powers in subsections (2) and (3).

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Operation of equipment

(2) For the purposes of this Subdivision, the ***AUSFTA verification powers*** include the power to operate equipment at premises to see whether:

(a) the equipment; or

(b) a disk, tape or other storage device that:

(i) is at the premises; and

(ii) can be used with the equipment or is associated with it;

contains information that is relevant to the verification of information relating to the export, production or transportation of textile and clothing goods that are exported to the US.

Removing documents and disks etc.

(3) For the purposes of this Subdivision, the ***AUSFTA verification powers*** include the following powers in relation to information described in subsection (2) that is found in the exercise of the power under that subsection:

(a) the power to operate equipment or other facilities at the premises to put the information in documentary form and remove the documents so produced;

(b) the power to operate equipment or other facilities at the premises to transfer the information to a disk, tape or other storage device:

(i) that is brought to the premises for the exercise of the power; or

(ii) that is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;

and to remove the disk, tape or other storage device from the premises.

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214BAD Appointment of verification officers

(1) The Comptroller-General of Customs may, by writing, authorise an officer to enter premises, and to exercise AUSFTA verification powers in or on premises, for the purposes of this Subdivision.

Who may be authorised to be a verification officer

(2) The Comptroller-General of Customs must not do so unless the Comptroller-General of Customs is satisfied that the officer is suitably qualified, because of the officer's abilities and experience, to exercise AUSFTA verification powers.

Form of authorisation

(3) An authorisation may apply:
  (a) generally; or
  (b) during a specified period; or
  (c) in or on specified premises; or
  (d) during a specified period in or on specified premises.

AUSFTA verification powers to be used only as authorised

(4) This Subdivision does not allow:
  (a) an officer who is authorised to enter premises and exercise AUSFTA verification powers during a specified period to enter the premises or exercise the powers at a time outside that period; or
  (b) an officer who is authorised to enter specified premises and to exercise AUSFTA verification powers in or on the premises to enter other premises or to exercise the powers in or on the other premises.

214BAE Verification officers may enter premises and exercise AUSFTA verification powers with consent

(1) A verification officer may enter premises, and exercise AUSFTA verification powers in or on the premises, to the extent that it is

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reasonably necessary for the purpose of verifying information relating to the export, production or transportation of textile and clothing goods that are exported to the US.

Occupier's consent required

(2) However, a verification officer must not enter premises under this section unless the occupier of the premises consents to the officer entering the premises and exercising AUSFTA verification powers in or on the premises.

(3) Before obtaining a consent under subsection (2), a verification officer must give to the occupier of the premises a written notice stating:

(a) that the officer wishes to enter the premises and exercise AUSFTA verification powers in or on the premises; and

(b) the period during which the officer wishes to exercise the powers; and

(c) the name of any US customs official who the officer proposes will accompany the officer.

(4) Before obtaining a consent under subsection (2), a verification officer must tell the occupier of the premises that the occupier may refuse consent.

(5) An occupier of premises may express a consent to be limited to entry to the premises, and to the exercise of AUSFTA verification powers in or on the premises, during a particular period unless the occupier withdraws the consent before the end of that period.

(6) An occupier's consent that is not so limited has effect in relation to any entry to the premises, and to any exercise of AUSFTA verification powers in or on the premises, until the occupier withdraws the consent.

Verification officer must leave premises if consent withdrawn

(7) A verification officer must leave the premises if the occupier withdraws the consent.

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Consent to be voluntary

(8) A consent of a person does not have effect for the purposes of this section unless it is voluntary.

Consent, or withdrawal of consent, to be in writing

(9) A consent of a person, or a withdrawal of consent by a person, does not have effect for the purposes of this section unless it is in writing.

Notice setting out the occupier's rights and obligations

(10) Before exercising AUSFTA verification powers in respect of premises, a verification officer must give to the occupier of the premises a written notice setting out the occupier's rights and obligations under this Subdivision.

Production of identity card

(11) Before a verification officer enters premises or exercises any AUSFTA verification powers, he or she must produce his or her identity card to the occupier.

214BAF US customs officials may accompany verification officers

Occupier's consent required

(1) In entering premises and exercising AUSFTA verification powers, a verification officer may be accompanied by one or more US customs officials, but only if the officer obtains the consent of the occupier of the premises to those officials accompanying the officer.

(2) Before obtaining such a consent, a verification officer must tell the occupier of the premises that the occupier may refuse consent.

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US customs officials must leave premises if consent withdrawn

(3) The US customs officials must leave the premises if the occupier withdraws the consent.

Consent to be voluntary

(4) A consent of a person does not have effect for the purposes of this section unless it is voluntary.

Consent, or withdrawal of consent, to be in writing

(5) A consent of a person, or a withdrawal of consent by a person, does not have effect for the purposes of this section unless it is in writing.

214BAG Availability of assistance in exercising AUSFTA verification powers

In entering premises and exercising AUSFTA verification powers, a verification officer may obtain such assistance as is necessary and reasonable in the circumstances.

214BAH Verification officer may ask questions

(1) If a verification officer is in or on premises that he or she entered under this Subdivision, the officer may request the occupier to answer any questions put by the officer.

(2) The occupier is not obliged to comply with the request.

214BAI Verification officer may ask for assistance

(1) If a verification officer is in or on premises that he or she entered under this Subdivision, then, while the officer is entitled to remain in or on the premises, the officer may request the occupier to provide reasonable assistance to the officer for the purpose of the officer's exercise of AUSFTA verification powers in or on the premises.

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(2) The occupier is not obliged to comply with the request.

214BAJ Verification officer may disclose information to US

A verification officer may disclose any information obtained in exercising AUSFTA verification powers to a US customs official for the purpose of a matter covered by Article 4.3 of the Agreement.

214BAK Operation of electronic equipment at premises

A person may operate electronic equipment at premises in order to exercise a power under this Subdivision only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

214BAL Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of equipment being operated as mentioned in section 214BAC:

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal

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Court of Australia for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1):

damage, in relation to data, includes damage by erasure of data or addition of other data.

Subdivision K—Miscellaneous

214BA Nature of functions of magistrate under sections 203S and 205E

(1) A function of making an order conferred on a magistrate by section 203S or 205E is conferred on the magistrate in a personal capacity and not as a court or a member of a court.

(2) Without limiting the generality of subsection (1), an order made by a magistrate under section 203S or 205E has effect only by virtue of this Act and is not taken, by implication, to be made by a court.

(3) A magistrate performing a function of, or connected with, making an order under section 203S or 205E has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).

(4) The Governor-General may make arrangements with the Governor of a State, the Chief Minister of the Australian Capital Territory or the Administrator of the Northern Territory for the performance, by all or any of the persons who from time to time hold office as

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magistrates in that State or Territory, of the function of making orders under section 203S or 205E.

215 Collector may impound documents

The Collector may impound or retain any document presented in connexion with any entry or required to be produced under this Act, but the person otherwise entitled to such document shall in lieu thereof be entitled to a copy certified as correct by the Collector and such certified copy shall be received in all courts as evidence and of equal validity with the original.

217 Translations of foreign invoices

If any document in a foreign language be presented to any officer for any purpose connected with the Customs Acts, the Collector may require to be supplied with an English translation to be made at the expense of the owner by such person as the Collector may approve or to be verified as he or she may require.

218 Samples

Samples of any goods under customs control may for any purpose deemed necessary by the Collector be taken utilized and disposed of by any officer in manner prescribed.

218A Disposal of certain abandoned goods

(1) If a Collector has reason to believe that goods found at a Customs place:

(a) are not required to be, or are not able to be, entered for home consumption; and

(b) have been abandoned by their owner;

the Collector may take steps to dispose of the goods in any manner he or she thinks appropriate.

(2) For the purposes of subsection (1), a Collector is taken to have reason to believe that goods found at a Customs place have been

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abandoned if a period prescribed for the purposes of this subsection, not exceeding 120 days, has passed since the goods were found at that place and no person has claimed ownership of the goods.

(3) If the Collector sells the goods, any expenses incurred by the Commonwealth in collecting and housing them and ultimately arranging for their disposal may be offset against any money realised on their sale.

(4) Nothing in this provision prevents a person, at any time after the end of the prescribed period in relation to particular goods found at a Customs place, from seeking compensation for those goods in accordance with section 4AB.

(5) For the purposes of this section, the Collector must ensure that there is created and maintained a record, in writing, specifying, in respect of particular goods found at a Customs place:

(a) the date on which and place at which the goods were found; and

(b) if the goods are subsequently disposed of—the date and manner of their disposal; and

(c) if the goods are sold—the amount realised on their sale and any amount offset against that amount in accordance with subsection (3).

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Division 1B—Detention and search of suspects

Subdivision A—Detention and frisk search of suspects

219L Detention for frisk search

(1) Where a detention officer suspects on reasonable grounds that a person is unlawfully carrying any prohibited goods on his or her body, an officer of Customs may, while a person is at a designated place, detain the person at the place for the purposes of being searched under this Subdivision.

(1A) If:

(a) officers have boarded a ship, aircraft or installation under section 187 for the purpose of conducting a search, or exercising any other power, under that section, in relation to that ship, aircraft or installation; and

(b) a detention officer suspects on reasonable grounds that a person who is on board the ship, aircraft or installation is unlawfully carrying prohibited goods on his or her body;

the detention officer may detain the person for the purpose of being searched under this Subdivision.

(2) Without limiting the generality of subsection (1) or (1A), a suspicion on reasonable grounds for the purposes of that subsection includes a suspicion reasonably formed on the basis of any of the following:

(a) the person's travel itinerary, including plans in relation to places that have been visited or are intended to be visited by the person;

(b) declarations or statements made under a law of the Commonwealth by the person in the course of arriving in or departing from Australia;

(c) documents in the person's possession, including passports, visas or tickets;

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(d) unusual behaviour of the person observed by or reported to an officer of Customs;

(e) the contents of or appearance of any visible item carried by the person or, if the person has baggage, of the person's baggage, whether or not carried by the person;

(f) the answers given by the person in relation to questions asked by an officer of Customs in the exercise of powers under this Act, or the refusal or failure of the person to answer such questions;

(g) the documents produced by the person in compliance with an obligation under this Act, or the refusal or failure of the person to produce such documents.

219M Frisk search

(1A) If a person is detained under section 219L, an officer of Customs may:

(a) carry out a frisk search of the person to determine whether the person is unlawfully carrying prohibited goods; and

(b) recover any prohibited goods found in the course of the frisk search.

(1) A frisk search of a person detained under section 219L is not to be carried out unless it is carried out:

(a) as soon as practicable after the detainee is detained; and

(b) by an officer of Customs who is of the same sex as the detainee.

(2) Before carrying out the frisk search of a person who is detained in a designated place that is a section 234AA place, the officer of Customs must:

(a) advise the detainee of the detainee's right to request that the search be carried out in an area of the place of detention that would, in the opinion of the Comptroller-General of Customs, provide adequate personal privacy to the detainee during the search; and

(b) if the detainee so requests, take the detainee to such an area.

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(3) If the detainee is detained at a designated place other than a section 234AA place, then, in the conduct of a frisk search of the detainee, the officer conducting the search must use his or her best endeavours to give the detainee as much personal privacy as the circumstances of the search allow.

219N Power to require the production of things

The officer of Customs carrying out a frisk search of a person detained in the circumstances referred to in subsection 219L(1) or (1A) may require the production of any thing found, as a result of that search, to be carried on the body of the detainee in order to determine whether it is, or contains, prohibited goods unlawfully carried by the detainee.

219P Persons to whom section 219R applies

Section 219R applies to a person detained under subsection 219L(1) or (1A) if:

(a) the detainee refuses to submit to a frisk search under this Subdivision; or

(b) the detainee, having submitted to the frisk search, refuses to produce a thing that he or she is required to produce under section 219N.

Subdivision B—Detention and external search of suspects

219Q Detention for external search

(1) Where a detention officer or police officer suspects on reasonable grounds that a person is unlawfully carrying any prohibited goods on his or her body, an officer of Customs or police officer may detain the person for the purposes of being searched under this Subdivision.

(2) Where a person is so detained, an officer of Customs or police officer must, as soon as practicable, take the person to:

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(a) a detention place that the officer considers suitable for the detention of the person for the purposes of this Subdivision; or

(b) a place (other than a detention place):

(i) if the person is detained by a detention officer—that, in the opinion of the Comptroller-General of Customs, affords adequate personal privacy to the person; or

(ii) if the person is detained by a police officer—that, in the police officer's opinion, affords adequate personal privacy to the person.

219R External search

External search by consent or order

(1) Where:

(a) by force of section 219P, this section applies to a person detained under section 219L; or

(b) a detention officer or police officer suspects on reasonable grounds that a person detained under section 219Q is unlawfully carrying prohibited goods on his or her body;

then:

(c) if:

(i) there are reasonable grounds to believe that the detainee is not in need of protection; and

(ii) the detainee consents to be searched; and

(iii) the requirements of section 219RAA are met in respect of that consent;

an officer of Customs or police officer must, as soon as practicable, carry out an external search of the detainee; or

(d) in any other case, the detention officer or police officer must, as soon as practicable, apply to a Justice or, in the circumstances set out in subsection (1A), to an authorised officer, for an order for an external search of the detainee.

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(1A) The detention officer or police officer may apply to an authorised officer only if:

(a) the detainee has waived his or her right to have the application for an order considered by a Justice; or

(b) a Justice is not reasonably available to consider such an application.

Making an order for an external search

(2) Subject to subsection (3), the person to whom an application is made may order that an external search of the detainee be carried out.

Note: A copy of the order is to be given to the detainee (or the person in whose presence the external search is to be carried out) under section 219ZAD.

(3) The person must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is unlawfully carrying prohibited goods.

Order for release of detainee

(4) Where the person does not make such an order, he or she must order that the detainee be released immediately.

Detainee in need of protection

(5) If an external search of the detainee is ordered and the person making the order is satisfied that the detainee is in need of protection, the person must order that the search be carried out in the presence of:

(a) the detainee's legal guardian; or

(b) a specified person (not being an officer of Customs or a police officer) who is capable of representing the detainee's interests in relation to the search.

(6) So far as is practicable, a person mentioned in an order under subsection (5) as the person in whose presence an external search is to be carried out must be acceptable to the detainee.

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Communicating with others

(7) Subject to subsection (8), the detainee may at any time communicate with another person.

(8) An officer of Customs or police officer may stop the detainee from communicating with another person if the officer believes on reasonable grounds that such communication should be stopped in order to:

(a) safeguard the processes of law enforcement; or

(b) protect the life and safety of any person.

Carrying out external search

(9) Where:

(a) an external search of the detainee is ordered; and

(b) a detention officer or police officer still suspects on reasonable grounds that the detainee is unlawfully carrying prohibited goods;

the detention officer or police officer must ensure that an external search of the detainee is carried out as soon as practicable.

(10) The search must be carried out:

(a) by an officer of Customs or a police officer; and

(b) in accordance with the order and this section.

(11) An external search of the detainee is to be carried out by a person who is of the same sex as the detainee.

External search using prescribed equipment

(11A) Prescribed equipment may be used in carrying out the external search if, and only if, consent to the use of the equipment in carrying out the search has been given by the detainee and the requirements of section 219ZAA are met.

Note 1: Section 219ZAB deals with regulations prescribing equipment.

Note 2: A detainee may be given, under section 219ZAD, a copy of the record of the invitation to consent and any consent of the detainee.

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Note 3: Any photograph or image taken using the prescribed equipment must be destroyed in accordance with section 219ZAE.

(11B) If use of the prescribed equipment involves samples from the detainee's body, the equipment may be used in the search only with samples from the outer surface of the detainee's hand.

Note: Any samples taken must be destroyed in accordance with section 219ZAE.

(11C) To avoid doubt, the search may be continued without the use of the prescribed equipment if the use of the equipment produces an indication that the detainee is or may be carrying prohibited goods.

Questioning a detainee

(12) While:

(a) a person is detained under section 219L and, by force of section 219P, this section applies to the person; or

(b) a person is detained under section 219Q;

a detention officer or police officer may question the person:

(c) for the purpose of carrying out an external search of the person under this section; or

(d) concerning any prohibited goods found to have been illegally carried by the person on his or her body as a result of the carrying out of an external search of the person under this section.

(13) The detention officer or police officer must not question the detainee under subsection (12) unless the detention officer or police officer has informed the detainee:

(a) that the detainee is not obliged to answer any questions asked of him or her; and

(b) that anything said by him or her may be used in evidence; and

(c) of his or her right to communicate with another person.

*Meaning of **authorised officer***

(14) In this section:

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authorised officer means an officer of Customs who is a member of a class of officers of Customs declared by the Comptroller-General of Customs to be authorised officers in relation to particular circumstances or places.

219RAA Videotape record may be made of external search

(1) In inviting a detainee to consent to an external search, an officer of Customs must have told the detainee:

(a) that a videotape or other electronic record may be made of the external search; and

(b) that, if such a record is made, the record could be used in evidence against the detainee in a court; and

(c) that, if such a record is made, a copy of the record will be provided to the detainee; and

(d) that the invitation, and any giving of consent, was being or would be itself recorded by audiotape, videotape or other electronic means or in writing.

Note: Any videotape or electronic record made of an external search must be destroyed in accordance with section 219ZAE.

(2) The invitation to consent and any giving of consent must have been recorded by audiotape, videotape or other electronic means or in writing.

Note: A detainee may be given, under section 219ZAD, a copy of the record of the invitation to consent and any consent of the detainee.

(3) The officer making the videotape or other electronic record must be of the same sex as the detainee.

(4) If, in the absence of consent by the detainee to an external search, an application is made for an order under subsection 219R(2) for an external search, that order may authorise the making of a videotape or other electronic record of the external search.

(5) If, in the course of carrying out an external search, an officer of Customs or a police officer finds evidence that the detainee is unlawfully carrying prohibited goods, that officer may, without the

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further consent of the detainee, take a photograph of the prohibited goods on the detainee.

Note: Any photograph taken must be destroyed in accordance with section 219ZAE.

Subdivision C—Detention and internal search of persons suspected of internally concealing substances etc.

219RA Certain Judges and Magistrates eligible to give orders under this Subdivision

(1) A Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory or of the Federal Circuit and Family Court of Australia (Division 1) may, by writing, consent to be nominated by the Minister under subsection (2).

(2) The Minister may, by writing, nominate a Judge of a court referred to in subsection (1) in relation to whom a consent is in force under that subsection to be a Division 1B Judge.

219S Initial detention

(1) If a detention officer or police officer suspects on reasonable grounds that a person is internally concealing a suspicious substance, an officer of Customs or police officer may detain the person for the purposes of:

(a) carrying out an internal non-medical scan under section 219SA; or

(b) enabling an application to be made under section 219T for an order for the person to be detained.

(2) If the person is so detained, an officer of Customs or police officer:

(a) must, as soon as practicable, take the person to the nearest detention place that the officer considers suitable for the detention of the person for the purposes of this Subdivision; and

(b) may detain the person at that place for those purposes.

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Note: See also subsections 219Z(3) to (6) for places at which a person can be detained if an internal medical search of the person is carried out.

219SA Internal non-medical scan using prescribed equipment

(1) If a person has been detained under section 219S, an officer of Customs may carry out an internal non-medical scan of the person, as soon as practicable, if:

(a) there are reasonable grounds to believe that the detainee is not in need of protection; and

(b) the detainee consents to an internal non-medical scan using equipment prescribed for the purposes of this subsection; and

(c) the requirements of section 219ZAA are met in inviting the detainee to so consent.

(2) An internal non-medical scan of a detainee must be carried out:

(a) using equipment prescribed for the purposes of subsection (1); and

(b) by an officer who is authorised for the purposes of subsection 219ZAA(3) to use that equipment.

Note 1: The officer must also be the same sex as the detainee (see subsection 219ZAA(3)).

Note 2: Any photograph or image taken using the prescribed equipment must be destroyed in accordance with section 219ZAE.

219SB Seeking detention order following invitation to consent to internal non-medical scan

If a person has been detained under section 219S, the Comptroller-General of Customs or a police officer must, as soon as practicable, apply for an order under section 219T that the detainee be detained if:

(a) the detainee has been invited to consent to an internal non-medical scan using equipment prescribed for the purposes of subsection 219SA(1); and

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(b) any of the following apply:

(i) the detainee does not consent to the internal non-medical scan;

(ii) the internal non-medical scan of the detainee is begun but not completed, and a detention officer or police officer suspects on reasonable grounds that the detainee is internally concealing a suspicious substance;

(iii) after carrying out the internal non-medical scan of the detainee, a detention officer or police officer suspects on reasonable grounds that the detainee is internally concealing a suspicious substance; and

(c) subsection 219V(2) does not apply (consent to internal medical search).

Note 1: An officer of Customs or a police officer must arrange for an internal medical search of the detainee by a medical practitioner if subsection 219V(2) applies.

Note 2: The detainee must be released under section 219ZE if no detention officer suspects on reasonable grounds that the detainee is concealing a suspicious substance.

219T Initial order for detention

(1A) This section applies if:

(a) a person is detained under section 219S; and

(b) subsection 219V(2) does not apply (consent to internal medical search); and

(c) for a person who has been invited to consent to an internal non-medical scan using prescribed equipment—the Comptroller-General of Customs or a police officer is required, under section 219SB, to apply for an order under this section.

(1) The Comptroller-General of Customs or a police officer must, as soon as practicable, apply:

(a) if there are reasonable grounds to suspect that the person is in need of protection—to a Division 1B Judge; or

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(b) in any other case—to a Division 1B Judge or a Division 1B Magistrate;

for an order that the detainee be detained.

(2) Subject to subsection (3), the Judge or Magistrate may order that the detainee be detained under this section for a period of 48 hours from:

(a) the time at which the detention began; or

(b) the time at which the order is made;

as the Judge or Magistrate thinks fit.

(3) The Judge or Magistrate must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

(4) Where the Judge or Magistrate does not make such an order, he or she must order that the detainee be released immediately.

(5) Where:

(a) a Judge or Magistrate orders that a detainee be detained under this section; and

(b) the Judge or Magistrate is satisfied that the detainee is in need of protection;

the Judge or Magistrate must appoint a person (not being an officer of Customs or police officer) to represent the detainee's interests in relation to this Division until the detainee is no longer in need of protection.

(6) So far as is practicable, a person so appointed must be acceptable to the detainee.

219U Renewal of order for detention

(1) Where:

(a) a person is being detained under an order under section 219T; and

(b) a detention officer or police officer decides that a further period of detention is necessary in order to determine

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whether the person is internally concealing a suspicious substance;

the Comptroller-General of Customs or a police officer may apply:

(c) if there are reasonable grounds to suspect that the detainee is in need of protection—to a Division 1B Judge; or

(d) in any other case—to a Division 1B Judge or a Division 1B Magistrate;

for an order that the detainee be further detained.

(2) Subject to subsection (3), the Judge or Magistrate may order that the detainee be further detained under this section for a period of 48 hours from the end of the period for which the unexpired order is in force.

(3) The Judge or Magistrate must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

(4) Where the Judge or Magistrate does not make such an order, he or she must order that, at the end of the period for which the unexpired order is in force, the detainee be released immediately.

219V Arrangement for internal medical search

Application of section

(1) This section applies only so long as a detention officer or police officer suspects on reasonable grounds that the detainee is internally concealing a suspicious substance.

Consent to internal medical search

(2) If:

(a) there are no reasonable grounds to believe that the detainee is in need of protection; and

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(b) the detainee signs a written consent to an internal medical search;

an officer of Customs or police officer must, as soon as practicable, arrange for an internal medical search of the detainee.

Note: A detainee may be given, under section 219ZAD, a copy of the consent of the detainee.

Application for order for internal medical search

(3) If:

(a) there are no reasonable grounds to believe that the detainee is in need of protection; and

(b) the detainee has been detained under section 219U; and

(c) the detainee has not signed a written consent to an internal medical search;

the Comptroller-General of Customs or a police officer must, before the end of the period of detention under that section, apply to a Division 1B Judge for an order for an internal medical search of the detainee.

(4) If there are reasonable grounds to believe that the detainee is in need of protection, the Comptroller-General of Customs or a police officer must:

(a) if a person has been appointed under subsection 219T(5) or 219X(3) to represent the detainee's interests in relation to this Division and that person consents to an internal medical search of the detainee—as soon as practicable after the consent is given; or

(b) if paragraph (a) does not apply, and the detainee has been detained under section 219U—before the end of the period of that detention;

apply to a Division 1B Judge for an order for an internal medical search of the detainee.

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Extension of detention period

(5) After the end of a period of detention under section 219S, 219T or 219U, the detainee may be further detained by force of this subsection:

(a) if subsection (2) applies—until the internal medical search is completed; or

(b) if subsection (3) or (4) applies—until an order under this section is granted.

Order for internal medical search

(6) Subject to subsections (9) and (10), the Judge may order that:

(a) an internal medical search of the detainee be carried out, the search to start:

(i) if consent to the search has been given under paragraph (4)(a)—as soon as practicable after the order is made and no later than a time specified in the order; or

(ii) in any other case—no sooner than the end of the period of detention under section 219U, but as soon as practicable after the end of that period and no later than a time specified in the order; and

(b) the detainee be detained for so long as is reasonably necessary for the internal medical search to be completed.

Order for release

(7) Where the Judge does not make such an order, he or she must order that the detainee be released immediately.

Extension of time for starting internal medical search

(8) Subject to subsections (9) and (10), on an application made by the Comptroller-General of Customs or a police officer within the time specified in an order under paragraph (6)(a), or the time as extended under this subsection, the Judge may extend that time.

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Limitation on making order

(9) The Judge must not make an order under subsection (6), or grant an extension of time under subsection (8), unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

Time for starting internal medical search

(10) Subject to subsection (11), the time specified in an order under paragraph (6)(a), including that time as extended under subsection (8), must not be later than 48 hours after:
  (a) if the detainee is being detained under section 219S, 219T or 219U—the end of the period of that detention; or
  (b) if the detainee is being detained under subsection (5)—the time when that detention began.

(11) If the Judge is satisfied that the detainee will refuse, or has refused, to submit to an internal medical search in spite of an order having been made under subsection (6), the time specified in the order under paragraph (6)(a), including that time as extended under subsection (8), is to be such time as the Judge considers appropriate in order to allow an internal medical search to be carried out.

219W Detention under this Subdivision

(1) A person detained under this Subdivision may at any time:
  (a) consult a lawyer; or
  (b) subject to subsection (3), communicate with another person.

(2) Where a person detained under this Subdivision wishes to consult a lawyer, an officer of Customs or police officer must arrange for the person to consult a lawyer of the person's choice.

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(3) An officer of Customs or police officer may stop a person so detained from communicating with another person if the officer believes on reasonable grounds that such communication should be stopped in order to:

(a) safeguard the processes of law enforcement; or

(b) protect the life and safety of any person.

(4) While a person is being detained under an order under this Subdivision, or has consented to an internal search under this Subdivision, a detention officer or police officer may ask the person such questions as are reasonable:

(a) to determine whether the person is internally concealing a suspicious substance; or

(b) concerning any such substance found to have been internally concealed by the person.

(5) The detention officer or police officer must not question the detainee under subsection (4) unless the detention officer or police officer has informed the detainee:

(a) that the detainee is not obliged to answer any questions asked of him or her; and

(b) that anything said by him or her may be used in evidence; and

(c) of his or her right to consult a lawyer or communicate with another person.

(6) While the person is detained under an order made under this Subdivision:

(a) subject to section 219ZG, the person is to be detained at a detention place; and

(b) the detention is to be conducted with such medical supervision as is specified in an order relating to the person's detention under this Subdivision; and

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(c) the detainee, his or her representative or (where applicable) a person appointed under subsection 219T(5) or 219X(3) to represent the detainee's interests in relation to this Division may at any time apply to:

(i) if the order was made by a Judge—a Division 1B Judge; or

(ii) if the order was made by a Magistrate—a Division 1B Judge or a Division 1B Magistrate;

for the order to be revoked.

219X Detainee becoming in need of protection

(1) If:

(a) at any time while a person is being detained under this Subdivision, there are reasonable grounds to believe that the detainee has become in need of protection; and

(b) until that time, the detainee has not been treated under this Subdivision as being in need of protection;

the Comptroller-General of Customs or a police officer must, as soon as practicable, apply for an order under this section.

(2) The application is to be made:

(a) if the person is being detained under an order made by a Division 1B Judge or Division 1B Magistrate—to such a Judge or Magistrate, as the case may be; or

(b) if not—to a Division 1B Judge.

(3) The Judge or Magistrate must, if satisfied that the detainee is in need of protection, appoint a person (not being an officer of Customs or a police officer) to represent the detainee's interests in relation to this Division until the detainee is no longer in need of protection.

(4) So far as is practicable, a person so appointed must be a person acceptable to the detainee.

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219Y Applications for orders under this Subdivision

(1) A detainee must be given adequate opportunity to obtain legal advice and legal representation in relation to an application for an order under this Subdivision.

(2) An application under this Subdivision may be made orally or in writing and, subject to subsection (5), must be made in person, and on oath or affirmation, at a hearing before the relevant Judge or Magistrate.

(3) Subject to subsection (4), the detainee has the right to be present at, to make submissions to, and to be represented before, any hearing before the Judge or Magistrate.

(4) The Judge or Magistrate, to the extent that he or she thinks necessary to:

(a) safeguard the processes of law enforcement; or

(b) protect the life and safety of any person;

may:

(c) restrict the rights under subsection (3) of the detainee to hear or have access to evidence presented by or on behalf of the Comptroller-General of Customs or a police officer; or

(d) order that a witness not be required to answer a question or to produce a document.

(5) Where it is not practicable to make an application under this Subdivision in person, the application may be made by telephone or any other appropriate method of communication, and:

(a) if the Judge or Magistrate so requires—the detainee or the detainee's representative is to be given an opportunity to make submissions to the Judge or Magistrate by the same method of communication; and

(b) as soon as practicable after making the application, the Comptroller-General of Customs or a police officer must give the Judge or Magistrate a statutory declaration setting out the facts and reasons supporting the application.

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219Z Internal medical search by medical practitioner

(1) An internal medical search is to be carried out by a medical practitioner.

(2) Where the detainee is in need of protection, the search is to be carried out in the presence of the person appointed under subsection 219T(5) or 219X(3).

(3) Subject to subsection (5), the search is to be carried out at a place that:
  (a) is specified in regulations made for the purposes of this subsection; or
  (b) is provided with the technical, paramedical and other services prescribed for the purposes of this subsection.

(4) If the person is not being detained at such a place, an officer of Customs or police officer must, as soon as practicable:
  (a) take the person to the nearest such place that the officer considers, on reasonable grounds, to be suitable for the search; and
  (b) continue the person's detention at that place.

(5) The recovery, during the search, of a substance or thing internally concealed by the detainee is to be carried out at a place that:
  (a) is specified in regulations made for the purposes of this subsection; or
  (b) is provided with the technical, paramedical and other services prescribed for the purposes of this subsection.

(6) If the person is not being detained at such a place, an officer of Customs or police officer must:
  (a) take the person to the nearest such place that the officer considers, on reasonable grounds, to be suitable for the recovery; and
  (b) continue the person's detention at that place.

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Subdivision CA—Prescribed equipment for external searches and internal non-medical scans

219ZAA Use of prescribed equipment for external search or internal non-medical scan

Requirements in inviting consent

(1) In inviting a detainee to consent to the use of prescribed equipment in an external search, or to an internal non-medical scan using prescribed equipment, an officer of Customs must tell the detainee the following:

(a) what the prescribed equipment is;

(b) the purpose for which the prescribed equipment would be used;

(c) that use of the prescribed equipment could produce evidence against the detainee that could be used in a court;

(d) what known risk (if any) would be posed to the detainee's health by use of the prescribed equipment;

(e) the procedure for the use of the prescribed equipment;

(f) that the prescribed equipment would be used by an officer of Customs authorised to use the equipment;

(g) in the case of an external search—that the search would be continued without the use of the prescribed equipment should use of the equipment indicate that the detainee was or might be carrying prohibited goods;

(h) in the case of an internal non-medical scan—that an order may be sought for the detainee to be detained, and for an internal medical search of the detainee to be carried out, if:

(i) the detainee does not consent to the internal non-medical scan; or

(ii) after carrying out an internal non-medical scan of the detainee, a detention officer or police officer suspects on reasonable grounds that the detainee is internally concealing a suspicious substance;

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(i) in any case—that the invitation, and any giving of consent, was being or would be recorded by audiotape, videotape or other electronic means or in writing;

(j) that the detainee is entitled to a copy of those records.

Note: A detainee may be given, under section 219ZAD, a copy of the record of the invitation to consent and any consent of the detainee.

(2) The invitation to consent and any consent must be recorded by audiotape, videotape or other electronic means or in writing.

Equipment to be operated by officer of same sex as detainee

(3) The prescribed equipment must be operated by an authorised officer who is of the same sex as the detainee.

Note: Section 219ZAC deals with authorisation of an officer to operate equipment.

219ZAB Prescribing equipment for use in external searches and internal non-medical scans

Equipment that may be prescribed for external searches

(1) For the purposes of subsection 219R(11A), the regulations may prescribe only equipment that can produce an indication that a person is or may be carrying prohibited goods on his or her body.

Equipment that may be prescribed for internal non-medical scans

(2) For the purposes of subsection 219SA(1), the regulations may prescribe only equipment that can produce an indication that a person is or may be internally concealing a suspicious substance.

(2A) Any equipment prescribed under subsection (2) must be configured so that the equipment's use, when carrying out an internal non-medical scan, is limited to that necessary to produce an indication that a person is or may be internally concealing a suspicious substance.

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Requirement for statement from Comptroller-General of Customs

(3) Before the Governor-General makes a regulation prescribing equipment for the purposes of subsection 219R(11A) or 219SA(1), the Minister must obtain from the Comptroller-General of Customs a statement that:

(a) the equipment can safely be used to detect prohibited goods or suspicious substances (as the case requires); and

(b) use of the equipment poses no risk, or minimal risk, to the health of a person whom the equipment is used to search; and

(c) a person does not require professional qualifications to operate the equipment.

Consultation with relevant authorities

(4) Before making a statement under subsection (3), the Comptroller-General of Customs must consult any Commonwealth authorities (if any) that have expertise or responsibilities relevant to the matters addressed by the statement.

(5) The Comptroller-General of Customs must table, before each House of the Parliament, a copy of any advice received under subsection (4) within 7 sitting days of that House after the day on which the statement is given to the Minister.

219ZAC Authorising officers to use prescribed equipment for external search or internal non-medical scan

(1) The Comptroller-General of Customs may authorise an officer of Customs for the purposes of subsection 219ZAA(3) to use prescribed equipment only if the officer has successfully completed the training, specified in writing by the Comptroller-General of Customs, in the operation of that equipment.

(2) The specification made under subsection (1) is not a legislative instrument.

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219ZAD Giving a record of invitation and consent, or a copy of order

Record of invitation to consent and consent

(1) If the detainee requests it, an officer of Customs must give the detainee, as soon as reasonably practicable:
  (a) a copy of the record of an invitation to consent:
    (i) to an external search under section 219R; or
    (ii) to the use of prescribed equipment in the conduct of an external search; or
    (iii) to an internal non-medical scan using prescribed equipment; and
  (b) if the detainee gave consent—a copy of the record of the detainee's consent.

(2) If a detainee requests it, an officer of Customs must give the detainee, as soon as reasonably practicable, a copy of the record of the detainee's consent to an internal medical search.

Copy of order for external search

(3) If an order for an external search of a detainee is made under subsection 219R(2), a copy of the order is to be given, as soon as reasonably practicable:
  (a) unless paragraph (b) applies—to the detainee; or
  (b) if the detainee is in need of protection—to the person in whose presence the external search is to be carried out.

219ZAE Records of results of external search or internal non-medical scan

(1) This section applies to any of the following (the ***search record***) produced in the course of an external search of a detainee under section 219R, or an internal non-medical scan of a detainee:
  (a) a videotape or other electronic record of an external search of the detainee;

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(b) a photograph or image of the detainee's body taken using equipment prescribed for the purposes of subsection 219R(11A) or 219SA(1);

(c) a photograph taken in the circumstances described in subsection 219RAA(5);

(d) a sample from the outer surface of the detainee's hand taken using equipment prescribed for the purposes of subsection 219R(11A).

Requirement for search record to be destroyed

(2) A search record must be destroyed as soon as practicable if:

(a) a period of 12 months has elapsed since the search record was made or produced (subject to subsection (3)); and

(b) proceedings against the detainee, relating to prohibited goods or suspicious substances, in respect of which the search record is relevant:

(i) have not been instituted; or

(ii) have been discontinued.

(3) A magistrate may extend the period of 12 months (or that period as previously extended under this subsection) referred to in paragraph (2)(a) in relation to a search record if:

(a) an officer of Customs or the Director of Public Prosecutions applies for the extension; and

(b) the magistrate is satisfied that there are special reasons for doing so.

(4) A search record must (subject to subsection (5)) be destroyed as soon as practicable if:

(a) the detainee is found to have committed a relevant offence (see subsection (7)) but no conviction is recorded; or

(b) the detainee is acquitted of a relevant offence and:

(i) no appeal is lodged against the acquittal; or

(ii) an appeal is lodged against the acquittal and the acquittal is confirmed or the appeal is withdrawn.

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Retention of search record pending destruction

(5) Despite subsection (4), a search record may be retained if:
  (a) an investigation is pending into another relevant offence (see subsection (7)); or
  (b) a proceeding is pending against the detainee for another relevant offence.

(6) The regulations must provide for the secure storage of any search record pending its ultimate destruction.

*Meaning of **relevant offence***

(7) For the purposes of this section, an offence is a ***relevant offence***, in relation to a search record, if:
  (a) the offence relates to prohibited goods or a suspicious substance; and
  (b) the search record relates to the offence.

Subdivision D—Detention generally

219ZA Detention officers

(1) The Comptroller-General of Customs may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision A.

(2) The Comptroller-General of Customs may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision B.

(3) The Comptroller-General of Customs may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision C.

219ZB Detention places

(1) A place that is:
  (a) prescribed for the purposes of this subsection; or

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(b) provided with amenities that satisfy standards prescribed for the purposes of this subsection;

is a detention place for the purposes of Subdivision B.

(2) A place that is:

(a) prescribed for the purposes of this subsection; or

(b) provided with amenities that satisfy standards prescribed for the purposes of this subsection;

is a detention place for the purposes of Subdivision C.

219ZC Detention under this Division

(1) An officer of Customs or police officer exercising powers under this Division in relation to a person must produce identification as such an officer when requested by the person to do so.

(2) An officer of Customs or police officer exercising powers under this Division in relation to a person must not use more force, or subject the person to greater indignity, than is reasonable and necessary.

(2A) Without otherwise limiting the application of subsection (2), the use of force in actually conducting an external search of a detainee will be regarded as reasonable and necessary:

(a) if an order has been made by a Justice under section 219R and the detainee does not submit to the search; or

(b) if an order has been made under that section by an authorised officer because a Justice was not reasonably available and the detainee does not submit to the search.

(3) While a person is being taken to a particular place under this Division (except under subsection 219ZE(3)) the person is regarded as being detained under this Division.

(4) While a person is being detained under this Division, the person is regarded as being in the custody of:

(a) if the person is being detained by an officer of Customs—the Comptroller-General of Customs; or

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(b) if the person is being detained by a member of the Australian Federal Police—the Commissioner of Police; or

(c) if the person is being detained by a member of the Police Force of a State or Territory—the person who holds, in relation to that Police Force, the same office as the Commissioner of Police holds in relation to the Australian Federal Police.

219ZD Detainees not fluent in English

(1) Where an officer of Customs or police officer detaining a person under this Division has reasonable cause to believe that the person is unable, because of inadequate knowledge of the English language or for any other reason, to communicate orally with reasonable fluency in the English language, the officer must take all reasonable steps to ensure that, at all times during the person's detention when communication with or by the person is to take place, a person competent to act as an interpreter is present and acts as interpreter for the purposes of the communication.

(2) Subsection (1) does not apply if the person detained and the person with whom he or she is communicating are able:

(a) to communicate in a language other than the English language with reasonable fluency; or

(b) to communicate satisfactorily by any other means.

219ZE Release from, or cessation of, detention

(1) In spite of any other provision of this Division, but subject to subsection (2) and section 219ZG, where a person is detained under this Division and:

(a) an order is made under this Division that the person be released; or

(b) an order for the detention of the person is revoked; or

(c) an order for the detention of the person has ended and subsection 219V (5) does not apply; or

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(ca) if the detention is under Subdivision A—no detention officer suspects on reasonable grounds that the person is unlawfully carrying prohibited goods on his or her body; or

(d) if the detention is under Subdivision B—no detention officer suspects on reasonable grounds that the person is unlawfully carrying prohibited goods on his or her body; or

(e) if the detention is under Subdivision C—no detention officer suspects on reasonable grounds that the person is internally concealing a suspicious substance; or

(f) an internal medical search of the person is completed;

the detention, and any search, of the person under this Division must cease immediately.

(2) Subsection (1) does not prevent a further application of this Division, or the detention of the person under any law other than this Division.

(3) If:

(a) the detainee is released at any place other than the place at which he or she was first detained; and

(b) the detainee so requests;

the detainee must immediately be returned free of charge to the place of the first detention.

Subdivision E—Medical practitioners

219ZF Conduct of internal medical search

(1) Subject to subsection (2), a medical practitioner may, in carrying out an internal medical search of a detainee under section 219Z, use any medical procedure or apparatus that the medical practitioner considers to be reasonably safe in the circumstances.

(2) The medical practitioner must not use any medical procedure involving surgical incision unless he or she considers it necessary to do so because the detainee's life is at risk.

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(3) If the medical practitioner:

(a) suspects on reasonable grounds during the internal medical search that the detainee is internally concealing a substance or thing; and

(b) lacks sufficient expertise to recover it;

he or she must, as soon as practicable, arrange for another medical practitioner having that expertise to do so.

219ZG Medical practitioner may take action to preserve detainee's life

(1) A medical practitioner may take such measures in relation to a detainee, including removal to another place, as the medical practitioner considers necessary because the detainee's life is at risk, including measures involving surgical incision or exploration.

(2) While the detainee is being so removed to a place, and while he or she is at that place:

(a) he or she may be detained under this subsection; and

(b) time is not to be taken to run under an order made under Subdivision C.

219ZH Medical practitioner to answer questions and prepare report

(1) Subject to subsection (4), at any time during the period during which a medical practitioner is involved in doing anything under this Division, an officer of Customs or police officer may ask the medical practitioner questions relating to whether an internal search of the detainee should be carried out, the manner in which such a search is being carried out or the results of such a search, and the medical practitioner must answer those questions to the best of his or her ability.

(2) As soon as practicable after completing anything done under this Division, the medical practitioner or medical practitioners involved must give to the chief officer of the person who detained the detainee a written report under subsection (3).

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(3) The report is to be in accordance with directions given by the chief officer concerned.

(4) Subsections (1), (2) and (3) are not limited by any law relating to privilege or confidentiality.

(5) A report prepared under subsection (3) and given to a chief officer under subsection (2) is, in any proceedings under this Act, prima facie evidence of the facts stated in the report.

(6) In this section:

chief officer means:

(a) in relation to an officer of Customs—the Comptroller-General of Customs; or

(b) in relation to a member of the Australian Federal Police—the Commissioner of Police; or

(c) in relation to a member of the Police Force of a State or Territory—the person who holds, in relation to that Police Force, the same office as the Commissioner of Police holds in relation to the Australian Federal Police.

219ZJ Proceedings against medical practitioners

Proceedings, other than proceedings concerning negligently causing injury, do not lie against a medical practitioner, or any person assisting or providing facilities to a medical practitioner, in respect of anything done by the medical practitioner under this Division.

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Division 1BA—Detention and search of persons for purposes of law enforcement co-operation

Subdivision A—Preliminary

219ZJA Definitions

In this Division, unless the contrary intention appears:

Commonwealth offence has the same meaning as in Part 1C of the *Crimes Act 1914*.

frisk search has the same meaning as in Division 1 of Part XII.

national security has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

ordinary search has the same meaning as in Division 1 of Part XII.

prescribed State or Territory offence means an offence prescribed for the purposes of section 219ZJAA.

serious Commonwealth offence means an offence against a law of the Commonwealth that is punishable on conviction by imprisonment for 12 months or more.

219ZJAA Prescribed State or Territory offences

(1) The regulations may prescribe offences against the laws of a State or a Territory that are punishable on conviction by imprisonment for a term of at least 3 years.

(2) An offence against a law of a State or Territory must not be prescribed unless:

(a) the Attorney-General of that State or Territory and the Minister (***Police Minister***) responsible for the administration of that State's or Territory's police force have jointly

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requested the Minister that the offence be prescribed for the purposes of this Division; or

(b) if the Attorney-General of the State or Territory is also the Police Minister of the State or Territory—the Attorney-General has requested the Minister that the offence be prescribed for the purposes of this Division.

Subdivision B—Powers to detain

219ZJB Detention of person suspected of committing serious Commonwealth offence or prescribed State or Territory offence

(1) An officer may detain a person if:

(a) the person is in a designated place; and

(b) the officer has reasonable grounds to suspect that the person has committed, is committing or intends to commit a serious Commonwealth offence or a prescribed State or Territory offence.

(2) The officer must advise a police officer of the person's detention as soon as practicable after detaining the person.

(3) An officer who is detaining a person under this section must ensure that the person is made available, as soon as practicable, to a police officer to be dealt with according to law.

(4) If an officer who is detaining a person under this section ceases to have reasonable grounds to suspect that the person has committed, was committing or was intending to commit a serious Commonwealth offence or a prescribed State or Territory offence, the officer must release the person from detention immediately.

(5) Subject to subsection (7), if a person is detained under this section for a period of greater than 2 hours, an officer who is detaining the person under this section must inform the person of the right of the person to have a family member or another person notified of the person's detention.

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(6) Where a person detained under this section wishes to have a family member or another person notified of the person's detention, the officer must take all reasonable steps to notify the family member or another person.

(7) An officer who is detaining the person under this section may refuse to notify a family member or another person of the person's detention if the officer believes on reasonable grounds that such notification should not be made in order to:

(a) safeguard national security, the security of a foreign country or the processes of law enforcement; or

(b) protect the life and safety of any person.

Note: In relation to references in this section to family member, see also section 4AAA.

219ZJC Detention of person subject to warrant or bail condition

(1) An officer may detain a person if:

(a) the person is in a designated place; and

(b) the officer has reasonable grounds to suspect that the person intends to leave the designated place; and

(c) either:

(i) there is a warrant for the arrest of the person in relation to a Commonwealth offence or a prescribed State or Territory offence; or

(ii) the person is on bail in relation to a Commonwealth offence or a prescribed State or Territory offence and subject to a bail condition (however expressed) that, if complied with, prevents the person from leaving Australia.

(2) The officer must advise a police officer of the person's detention as soon as practicable after detaining the person.

(3) An officer who is detaining a person under this section must ensure that the person is delivered, as soon as practicable, into the custody of a police officer to be dealt with according to law.

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(4) Subject to subsection (6), if a person is detained under this section for a period of greater than 45 minutes, an officer who is detaining the person under this section must inform the person of the right of the person to have a family member or another person notified of the person's detention.

(5) Where a person detained under this section wishes to have a family member or another person notified of the person's detention, the officer must take all reasonable steps to notify the family member or another person.

(6) An officer who is detaining the person under this section may refuse to notify a family member or another person of the person's detention if the officer believes on reasonable grounds that such notification should not be made in order to:

(a) safeguard national security, the security of a foreign country or the processes of law enforcement; or

(b) protect the life and safety of any person.

Note: In relation to references in this section to family member, see also section 4AAA.

219ZJCA Detention of person for national security or security of a foreign country

(1) An officer may detain a person if:

(a) the person is in a designated place; and

(b) the officer is satisfied on reasonable grounds that the person is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country.

(2) An officer who is detaining a person under this section must (subject to subsection (3)) ensure that the person is made available, as soon as practicable, to a police officer in person to be dealt with according to law.

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(3) An officer who is detaining a person under this section must release the person from that detention immediately if:

(a) the officer ceases to be satisfied on reasonable grounds that the person is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country; or

(b) the person is made available to a police officer under subsection (2); or

(c) a police officer indicates that the police force to which the police officer belongs has no interest in the person.

(4) Subject to subsection (6), if a person is detained under this section for more than 2 hours, an officer who is detaining the person under this section must inform the person of the right of the person to have a family member or another person notified of the person's detention.

(5) Where a person detained under this section wishes to have a family member or another person notified of the person's detention, the officer must take all reasonable steps to notify the family member or the other person.

(6) An officer who is detaining the person under this section may refuse to notify a family member or another person of the person's detention if the officer believes on reasonable grounds that such notification should not be made in order to:

(a) safeguard national security, the security of a foreign country or the processes of law enforcement; or

(b) protect the life and safety of any person.

Note: In relation to references in this section to family member, see also section 4AAA.

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Subdivision C—Matters affecting detention generally

219ZJD Search of person detained under this Division

(1) An officer may, in relation to a person detained under this Division:

(a) conduct a frisk search or an ordinary search of the person; and

(b) search the clothing that the person is wearing and any property under the person's immediate control, if the officer believes on reasonable grounds that it is necessary to do so;

for the purposes of:

(c) determining whether there is concealed on the person, or in the person's clothing or property, a weapon or other thing capable of being used to inflict bodily injury or to assist the person to escape from detention; or

(d) in the case of a person detained under section 219ZJB—preventing the concealment, loss or destruction of evidence of, or relating to, the offence concerned; or

(e) in the case of a person detained under section 219ZJCA—preventing the concealment, loss or destruction of material of interest for national security or the security of a foreign country.

(2) A search under this section must be conducted:

(a) as soon as practicable after the person is detained; and

(b) by an officer of the same sex as the detained person.

(3) An officer who conducts a search under this section may seize:

(a) any weapon or thing mentioned in paragraph (1)(c); and

(b) anything the officer has reasonable grounds to believe is a thing:

(i) with respect to which an offence has been committed; or

(ii) that will afford evidence of the commission of an offence; or

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(iii) that was used, or intended to be used, for the purpose of committing an offence; or

(iv) that is of interest for national security or the security of a foreign country.

(4) An officer who seizes a weapon or other thing under subsection (3) must ensure that it is made available to:

(a) the police officer to whom the person is made available under subsection 219ZJB(3) or 219ZJCA(2); or

(b) the police officer into whose custody the person is delivered under subsection 219ZJC(3).

219ZJE Comptroller-General of Customs must give directions about detaining persons under this Division

The Comptroller-General of Customs must, by legislative instrument, give directions:

(a) identifying places at which an officer is permitted to detain a person under this Division (whether by their character under this Act, the amenities available at the places or any other matters); and

(b) specifying such other matters relating to the detention of persons under this Division as the Comptroller-General of Customs considers appropriate.

219ZJF Detainees to be given reasons for detention and shown identification on request

(1) An officer who detains a person under section 219ZJB or 219ZJC must inform the person, at the time the officer detains the person, of the reason for the person's detention.

(2) Subsection (1) does not apply if the person, by the person's own actions, makes it impracticable for the officer to inform the person of the reason.

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(3) An officer exercising powers under this Division in relation to a person must produce identification that he or she is an officer when requested by the person to do so.

219ZJG Use of force in relation to detention

(1) An officer exercising powers under this Division in relation to a person must not use more force, or subject the person to greater indignity, than is reasonable and necessary.

(2) Without limiting the generality of subsection (1), an officer must not, in detaining or attempting to detain a person under this Division, or preventing or attempting to prevent a detained person from escaping from detention under this Division, do an act likely to cause death or grievous bodily harm to the person, unless the officer believes on reasonable grounds that doing the act is necessary to protect life or prevent serious injury to the officer or any other person.

219ZJH Moving detained persons

(1) While a person is being taken to a particular place under this Division (except under subsection (2)), the person is regarded as being detained under this Division.

(2) If:

(a) a person detained under this Division is released at any place other than the place at which he or she was first detained; and

(b) the person so requests;

the person must immediately be returned free of charge to the place of the first detention.

219ZJI Detainees not fluent in English

Section 219ZD applies to an officer detaining a person under this Division as if the detention under this Division were detention under Division 1B of this Part.

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Note: Section 219ZD requires the officer to take reasonable steps to ensure that a competent interpreter is available for the purposes of communication.

219ZJJ Detention of minors

(1) Subject to subsection (2), an officer who under this Division detains a person who is known or believed to be a minor must:
  (a) inform the minor of the right for a parent or guardian or person described in paragraph (c) to be notified of the minor's detention; and
  (b) upon the request of the minor, take all reasonable steps to notify such person and inform them of:
    (i) the fact that the minor has been detained; and
    (ii) the place in which the minor is being held; and
    (iii) the place to which the minor is to be transferred by police, if that place is known at the time of contacting the minor's parent or guardian; and
    (iv) the reason for the minor's detention, unless the minor is detained under section 219ZJCA; and
  (c) if a parent or guardian is not acceptable to the detained minor under this subsection, the detained minor may request that another person who is capable of representing the interests of the minor be notified.

(2) An officer who under this Division detains a person who is known or believed to be a minor may refuse to notify a parent or guardian or person described in paragraph (1)(c) of the person's detention if the officer believes on reasonable grounds that such notification should not be made in order to:
  (a) safeguard national security, the security of a foreign country or the processes of law enforcement; or
  (b) protect the life and safety of any person.

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(3) If at the time of notifying the parent or guardian, the officer is not aware of the place referred to in subparagraph (1)(b)(iii), the officer must:

(a) contact the parent or guardian or other person described in paragraph (1)(c) immediately after that place becomes known to the officer; and

(b) inform the parent or guardian of that place.

(4) An officer who under this Division detains a person who is known or believed to be a minor must, at the time of advising a police officer of the minor's detention in accordance with subsection 219ZJB(2) or 219ZJC(2), advise the police officer of the fact that the detained person is a minor, or is believed to be a minor.

(5) For the purposes of this section, a minor is considered to be any person under the age of 18 years.

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Division 1C—Judges and Magistrates

219ZK Nature of functions of Judge or Magistrate

(1) Where this Part confers on a Judge or Magistrate the function of issuing a warrant or giving an order, the function is so conferred on the Judge or Magistrate in a personal capacity and not as a court or a member of a court.

(2) Without limiting the generality of subsection (1), a warrant or order issued or given by a Judge or Magistrate under this Part has effect only by virtue of this Act and is not to be taken by implication to be issued or given by a court.

219ZL Protection of Judge or Magistrate

(1) A Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory or of the Federal Circuit and Family Court of Australia (Division 1) has, in performing a function of, or connected with, issuing a warrant or giving an order under this Part, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

(2) A Judge of the Supreme Court of a State, or a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in subsection (1), has, in performing a function of, or connected with, issuing a warrant or giving an order under this Part, the same protection and immunity as if he or she were performing that function as that Supreme Court or as a member of that Supreme Court.

(3) A Magistrate performing a function of, or connected with, issuing a warrant or giving an order under this Part has the same protection and immunity as if he or she were performing that function as a Magistrates Court or as a member of a Magistrates Court.

(3AA) A Judge, or acting Judge, of the Local Court of New South Wales performing a function of, or connected with, issuing a warrant or

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giving an order under this Part has the same protection and immunity as if he or she were performing that function as that Local Court or as a Judge of that Local Court.

(3A) A Judge, or acting Judge, of the Local Court of the Northern Territory performing a function of, or connected with, issuing a warrant or giving an order under this Part has the same protection and immunity as if he or she were performing that function as that Local Court or as a Judge of that Local Court.

(4A) No civil or criminal action is to be brought against a Justice in respect of anything done, or omitted to be done, in performing the function of, or a function connected with, making an order under section 219R.

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Division 2—Protection to officers

220 Reasonable cause for seizure a bar to action

No person shall be liable for any seizure under this Act for which there shall have been reasonable cause, and when any claimant recovers any ship aircraft or goods seized or any proceeds thereof and at the same time reasonable cause for the seizure is found such finding shall bar all proceedings against all persons concerned in the seizing.

221 Notice of action to be given

No proceedings shall be commenced against any officer for anything done in execution of or by reason of his or her office until one month next after notice in writing shall have been delivered to him or her or left at his or her usual place of abode by the plaintiff, or the plaintiff's attorney or agent, in which notice shall be clearly stated the cause and nature of the proceeding and the court in which the same is intended to be instituted, the name and place of abode of the plaintiff and the name and place of business of such attorney or agent unless the Supreme Court of a State, the Supreme Court of the Australian Capital Territory or the Supreme Court of the Northern Territory of Australia has granted leave to the plaintiff to proceed without notice, which leave the Court may grant on such terms as it thinks just.

222 Defect in notice not to invalidate

No notice under the last preceding section shall be deemed invalid by reason of any defect or inaccuracy therein unless the Court is of opinion that the defect or inaccuracy would prejudice the defendant in his or her defence and the Court may give leave to amend such notice as it thinks just.

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223 No evidence to be produced but that contained in notice

Upon any proceeding instituted in pursuance of such notice the plaintiff shall not be at liberty to advance any evidence of any cause of action except such as has been distinctly stated in such notice nor shall the plaintiff be entitled to a verdict without proving on the trial that such notice has been duly served.

224 Officer may tender amends

It shall be lawful for any officer to whom notice of proceeding shall have been given at any time within one month after such notice to tender amends to the plaintiff, or to the plaintiff's attorney or agent, and in case such amends be not accepted to plead such tender in defence either alone or with other defences and if the amends tendered shall be found to have been sufficient no costs shall be recovered against an officer and he or she shall be entitled to costs if he or she shall have brought the amount into court when entering his or her defence.

225 Commencement of proceedings against officers

Every proceeding against any officer shall except as mentioned in the next section be commenced within 6 months after its cause shall have arisen and not afterwards and the venue shall be local and the defendant may plead the general issue and give any special matter in evidence.

226 Time for commencing action

(1) No proceeding whether against an officer or otherwise for anything done for the protection of the revenue in relation to any Customs Tariff or Customs Tariff alteration proposed in the Parliament shall except as mentioned in the next section be commenced before the close of the session in which such Tariff or Tariff alteration is proposed or before the expiration of 12 months after such Tariff or Tariff alteration is proposed, whichever first happens.

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(2) No proceeding, whether against an officer or otherwise, for anything done for the protection of the revenue in relation to a Customs Tariff or Customs Tariff alteration that is intended to be proposed in accordance with an instrument made under section 273EA shall, except as provided in the next succeeding section, be commenced before:

(a) the seventh sitting day of the House of Representatives after the date of registration of the instrument under the *Legislation Act 2003*, or the day on which the period of 6 months from the date of registration of the instrument under the *Legislation Act 2003* expires, whichever is the earlier day; or

(b) where, on or before the earlier of the days referred to in the last preceding paragraph, a Customs Tariff or Customs Tariff alteration that would validate the thing so done is proposed in the Parliament—the close of the session in which the Customs Tariff or Customs Tariff alteration is so proposed, or the expiration of 12 months after the Customs Tariff or Customs Tariff alteration is so proposed, whichever first happens.

227 Security may be required

The Supreme Court of a State, the Supreme Court of the Australian Capital Territory or the Supreme Court of the Northern Territory of Australia on the application of any person who desires to commence any proceeding mentioned in the last section against an officer may require the officer to give security to the satisfaction of the Court to abide the result of the proceeding and in default of the giving of such security may sanction the immediate commencement of the proceeding.

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Division 3—Evidence

227AA Evidence may be used in prosecutions etc.

(1) To avoid doubt, if, when exercising powers under this Act, an officer obtains evidence of the commission of an offence against Part 9.1 of the *Criminal Code*, then that evidence may be used, or given to another body for use, in:

(a) investigating the offence; or

(b) proceedings for the prosecution for the offence.

(2) To avoid doubt, if, when exercising powers under this Act, an officer obtains evidence of the commission of an offence against Subdivision B of Division 72 of the *Criminal Code*, then that evidence may be used, or given to another body for use, in:

(a) investigating the offence; or

(b) proceedings for the prosecution for the offence.

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Part XIIA—Special provisions relating to prohibited items

227A Overview of Part

This Part deals with certain items on board a ship or an aircraft that is in Australia after arriving in Australia from a place outside Australia. The Part empowers an officer, under certain circumstances:

(a) to approve a storage place on the ship or aircraft for the purpose of safekeeping the item; or

(b) to take the item into custody;

for a period that ends when the ship or aircraft departs from Australia or otherwise ceases to be subject to this Part.

227B Definitions

In this Part:

operator means:

(a) in relation to a ship—the owner or master of the ship; and

(b) in relation to an aircraft—the owner or pilot of the aircraft.

prohibited item means a thing to which this Part applies because of section 227D.

227C Ships and aircraft to which this Part applies

(1) This Part applies to a ship if:

(a) the ship is in Australia after undertaking a voyage to Australia from a place outside Australia; and

(b) the ship is not a ship that is taken to have been imported into Australia under subsection 49A(7).

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(2) This Part applies to an aircraft if:

(a) the aircraft is in Australia after undertaking a flight to Australia from a place outside Australia; and

(b) the aircraft is not an aircraft that is taken to have been imported into Australia under subsection 49A(7).

(3) This Part ceases to apply to a ship when:

(a) the ship has departed from its last port in Australia for a place outside Australia; or

(b) the ship is taken to have been imported into Australia under subsection 49A(7).

(4) This Part ceases to apply to an aircraft when:

(a) the aircraft has departed from its last airport in Australia for a place outside Australia; or

(b) the aircraft is taken to have been imported into Australia under subsection 49A(7).

(5) If:

(a) this Part ceased to apply to a ship because the ship has departed from its last port in Australia as mentioned in paragraph (3)(a); but

(b) the ship returns to Australia before completing a voyage to a place outside Australia;

then, subject to paragraph (1)(b) and subsection (3), this Part applies to the ship after it has so returned as if it has just undertaken a voyage to Australia from a place outside Australia.

(6) If:

(a) this Part ceased to apply to an aircraft because the aircraft has departed from its last airport in Australia as mentioned in paragraph (4)(a); but

(b) the aircraft returns to Australia before completing a flight to a place outside Australia;

then, subject to paragraph (2)(b) and subsection (4), this Part applies to the aircraft after it has been so returned as if it has just undertaken a flight to Australia from a place outside Australia.

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227D Items to which this Part applies

This Part applies to any thing if:

(a) it is on board a ship or an aircraft to which this Part applies; and

(b) its importation is:

(i) prohibited absolutely by the *Customs (Prohibited Imports) Regulations 1956*; or

(ii) prohibited by those regulations unless a licence, permission, consent, approval or other document (however described) is granted or given, and such a licence, permission, consent, approval or other document has not been granted or given; and

(c) either:

(i) it is, or should have been, specified in a report given by the operator under section 64AAA as part of the stores of the ship or aircraft; or

(ii) it is part of the personal effects of the crew of the ship or aircraft.

227E Approved storage for prohibited items

(1) An officer may, in writing, approve a place on board a ship or an aircraft to which this Part applies as a place in which a prohibited item on board that ship or aircraft must be stored while this Part applies to the ship or aircraft.

(2) An officer must not give the approval unless the officer is satisfied that:

(a) only the operator concerned may access the place; and

(b) the place is otherwise sufficiently secure for the purposes of preventing persons from removing the item from the place.

Example: If a safe on board a ship is sought to be approved under subsection (1), the approval may not be given if a person other than the operator of the ship holds a key to the safe.

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(3) An officer may place a fastening, or a lock, mark or seal on an approved place for the purposes of preventing persons from accessing that place.

(4) If an approval under subsection (1) is not revoked at an earlier time, it continues to be in force until this Part ceases to apply to the ship or aircraft concerned.

(5) While an approval under subsection (1) is in force in relation to a prohibited item, a person must not:

(a) interfere in any way with any fastening, lock, mark or seal placed on the approved place by an officer; or

(b) remove the item from the approved place.

Penalty: 60 penalty units.

(6) An offence against subsection (5) is an offence of strict liability.

(7) Subsection (5) does not apply if the person has the written permission of an officer for the interference or removal.

227F Officer may take custody of items

(1) If:

(a) this Part applies to a prohibited item on board a ship or aircraft; and

(b) no approval under section 227E is in force in relation to a place on board that ship or aircraft as the place for storing that item;

an officer must take custody of that item.

(2) Within 48 hours after taking custody of the item, an officer must give a written notice to the operator of the ship or aircraft under this section.

(3) The notice must be in an approved form.

(4) Without limiting subsection (3), the notice must identify the prohibited item concerned.

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(5) The Comptroller-General of Customs must ensure that an item taken into custody under this section is:

(a) securely stored while it is in custody under this section; and

(b) returned to the operator of the ship or aircraft concerned:

(i) if subparagraph (ii) does not apply—when the ship is at its last port of call in Australia, or when the aircraft is at its last airport of call in Australia, and after a Certificate of Clearance referred to in section 118 has been granted in relation to the departure of that ship from that port, or the departure of the aircraft from that airport (as the case requires); or

(ii) when this Part ceases to apply to the ship or aircraft because it is taken to have been imported into Australia under subsection 49A(7).

(6) To avoid doubt, subsection (5) does not affect the power of an officer to seize or otherwise deal with the item under this Act (including provisions in this Act relating to prohibited goods) when this Part ceases to apply to the ship or aircraft concerned.

(7) After an item is returned to the operator under subsection (5) and before the ship or aircraft leaves Australia, the operator concerned must comply with any conditions specified by the Comptroller-General of Customs in relation to the storage of that item.

227G Compensation for damage etc. to items

(1) If:

(a) an activity undertaken by or on behalf of the Commonwealth in relation to a prohibited item taken into custody under this Part causes the loss or destruction of, or damage to, that item; and

(b) the loss, destruction or damage occurred wholly or partly as a result of:

(i) insufficient care being exercised in selecting the persons to undertake the activity; or

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(ii) insufficient care being exercised by the person undertaking that activity;

compensation for the loss, destruction or damage is payable to the owner of the item concerned.

(2) Compensation is payable out of money appropriated by the Parliament for the purpose.

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Part XIII—Penal Provisions

Division 1—Forfeitures

228 Forfeited ships and aircraft

(1) The following ships, boats and aircraft shall be forfeited to the Crown:

(a) Any ship or aircraft used in smuggling, or knowingly used in the unlawful importation, exportation, or conveyance of any prohibited imports or prohibited exports.

(b) Any ship the master of which has failed to facilitate, by all reasonable means, the boarding of his or her ship, under the *Maritime Powers Act 2013*, in circumstances set out in subsection (2) or (3).

(c) Any aircraft failing to land at an airport or landing field for boarding upon its pilot being required to land the aircraft, under the *Maritime Powers Act 2013*, in circumstances set out in subsection (4), (5) or (6).

(d) Any ship or aircraft from which goods are thrown overboard staved or destroyed to prevent seizure by an officer of Customs.

(e) Any ship or aircraft found within any port or airport with cargo on board and afterwards found light or in ballast or with the cargo deficient and the master or pilot of which is unable to lawfully account for the difference.

(f) Any ship or aircraft which on being boarded is found to be constructed, adapted, altered or fitted in any manner for the purpose of concealing goods.

(2) The circumstances are:

(a) the ship is a foreign ship; and

(b) the ship is on the landward side of the outer edge of Australia's territorial sea; and

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(c) the boarding is for the purposes of this Act or an Act prescribed by the regulations, or for the purposes of determining whether a contravention, or an attempted contravention, in Australia of section 72.13 or Division 307 of the *Criminal Code* is occurring.

(3) The circumstances are:

(a) the ship is an Australian ship; and

(b) the ship is outside the territorial sea of any foreign country; and

(c) the boarding is for the purposes of this Act or an Act prescribed by the regulations, or for the purposes of determining whether a contravention, or an attempted contravention, in Australia of section 72.13 or Division 307 of the *Criminal Code* is occurring.

(4) The circumstances are:

(a) either:

(i) the aircraft is an Australian aircraft over anywhere except a foreign country; or

(ii) the aircraft is a foreign aircraft over Australia; and

(b) the requirement to land is made:

(i) in relation to the operation of this Act; and

(ii) because the pilot of the aircraft has failed to comply with a requirement made in the exercise of aircraft identification powers.

(5) The circumstances are:

(a) either:

(i) the aircraft is an Australian aircraft over anywhere except a foreign country; or

(ii) the aircraft is a foreign aircraft over Australia; and

(b) an authorising officer reasonably suspects that the aircraft is or has been involved in a contravention, or attempted contravention, of this Act or section 72.13 or Division 307 of the *Criminal Code*.

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(6) The circumstances are:

(a) either:

(i) the aircraft is an Australian aircraft over anywhere except a foreign country; or

(ii) the aircraft is a foreign aircraft over Australia; and

(b) an authorising officer reasonably suspects that the aircraft is carrying goods satisfying either or both of the following subparagraphs:

(i) the goods are connected, whether directly or indirectly, with the carrying out of a terrorist act, whether a terrorist act has occurred, is occurring or is likely to occur;

(ii) the existence or the shipment of the goods prejudices, or is likely to prejudice, Australia's defence or security or international peace and security.

228A Forfeited resources installations

Any overseas resources installation that becomes attached to the Australian seabed without the permission of the Comptroller-General of Customs given under subsection 5A(2) shall be forfeited to the Crown.

228B Forfeited sea installations

Any overseas sea installation that becomes installed in a coastal area without the permission of the Comptroller-General of Customs given under subsection 5B(2) shall be forfeited to the Crown.

228C Forfeited offshore electricity installations

An offshore electricity installation is forfeited to the Crown if the installation:

(a) was an overseas offshore electricity installation immediately prior to being installed in the Commonwealth offshore area; and

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(b) is installed in that area without the permission of the Comptroller-General of Customs granted under subsection 5BA(4).

229 Forfeited goods

(1) The following goods shall be forfeited to the Crown:

(a) All goods (not being objects forfeited, or liable to forfeiture, under the *Protection of Movable Cultural Heritage Act 1986*) which are smuggled, or unlawfully imported, exported, or conveyed.

(b) All prohibited imports.

(ba) All goods the importation of which has been prohibited unless a licence or permission containing conditions or requirements has been granted and those conditions or requirements have not been complied with.

(bb) Any goods sold under section 206 or 209J or sold or otherwise disposed of under section 208D or 209K subject to a condition that has not been complied with.

(c) All goods imported or exported in any ship boat or aircraft in which goods are prohibited to be imported or exported.

(d) All dutiable goods found on any ship boat or aircraft being unlawfully in any place.

(da) All restricted goods brought into Australia other than in accordance with a permission under subsection 233BABAE(2).

(e) All goods found on any ship or aircraft after arrival in any port or airport and not being specified or referred to in the cargo report made under section 64AB and not being baggage belonging to the crew or passengers and not being satisfactorily accounted for.

(f) All goods in respect of which bulk is unlawfully broken.

(g) All goods subject to customs control that are moved, altered or interfered with except as authorized by this Act.

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(h) All goods which by this Act are required to be moved or dealt with in any way and which shall not be moved or dealt with accordingly.

(j) Any carriage or animal used in smuggling or in the unlawful importation, exportation, or conveyance of any goods.

(m) All goods not being passengers' baggage found on any ship or aircraft after clearance and not specified or referred to in the Outward Manifest and not accounted for to the satisfaction of the Collector.

(n) All prohibited exports put on any ship boat or aircraft for export or brought to any wharf or place for the purpose of export.

(na) All goods that are the subject of a notice under subsection 112BA(1) and are put on any ship or aircraft for export or are brought to any wharf or place for the purpose of export.

(o) All dutiable goods concealed in any manner.

(p) Any package having concealed therein goods not enumerated in the entry or being so packed as to deceive the officer.

(q) All dutiable goods found in the possession or in the baggage of any person who has got out of, landed from or gone on board any ship boat or aircraft and who has denied that he or she has any dutiable goods in his or her possession, or who when questioned by an officer has not fully disclosed that such goods are in his or her possession or baggage.

(qa) If unaccompanied personal or household effects of a person are imported into Australia—all dutiable goods that are found among those effects, where the person has denied that there are any dutiable goods among the effects, or after having been questioned by an officer has not fully disclosed that there are such goods among the effects.

(r) All goods offered for sale on the pretence that the same are prohibited or smuggled goods.

(1A) In spite of subsection (1), goods are not forfeited to the Crown merely because they are imported or exported in contravention of the *Road Vehicle Standards Act 2018*.

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(2) Notwithstanding section 228, this section applies in relation to ships, boats and aircraft as well as other goods.

(3) In spite of subsection (1), goods are not forfeited to the Crown merely because they are imported or exported in contravention of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

(4) In spite of subsection (1), goods are not forfeited to the Crown merely because they are imported or exported in contravention of the *Product Emissions Standards Act 2017*.

229A Proceeds of drug trafficking liable to forfeiture

(1) In this section, unless the contrary intention appears:

cheque includes a bill, promissory note or other security for money.

goods includes cheques, but does not include moneys in the form of cash.

moneys means moneys in the form of cash.

(2) This section applies to:

(a) moneys or goods in the possession or under the control of a person, being moneys or goods that came into his or her possession or under his or her control by reason of:

(i) the person selling or otherwise dealing in, or agreeing to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act; or

(ii) the person importing, or agreeing to import, narcotic goods into Australia in contravention of this Act; or

(iii) the person exporting, or agreeing to export, narcotic goods from Australia in contravention of this Act; or

(iv) the person keeping or having kept, or agreeing to keep, in his or her possession narcotic goods imported into Australia in contravention of this Act; or

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(v) the person conspiring with another person or other persons to import any narcotic goods into Australia in contravention of this Act or to export any narcotic goods from Australia in contravention of this Act; or

(vi) the person aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the sale of, or other dealing in, narcotic goods imported into Australia in contravention of this Act, the importation of narcotic goods into Australia in contravention of this Act, the exportation of narcotic goods from Australia in contravention of this Act or the keeping in the possession of any person of narcotic goods imported into Australia in contravention of this Act;

(b) moneys in the possession or under the control of a person that were paid to him or her for the sale of goods that were, immediately before the sale, goods to which this section applied; and

(c) goods in the possession or under the control of a person that were purchased or otherwise acquired by him or her with or out of moneys to which this section applied.

Note: Goods are imported or exported in contravention of this Act if they are imported or exported in breach of a prohibition under this Act: see subsection 4(4A).

(3) Where a person who obtained possession or control of a cheque, or was paid moneys by a cheque, in any of the circumstances set out in paragraph (2)(a) or (b) receives, in respect of the cheque, moneys in the form of cash, the moneys so received shall, for the purposes of subsection (2), be deemed to be moneys that came into his or her possession or under his or her control, or were paid to him or her, in the circumstances in which he or she obtained possession or control of the cheque, or was paid the moneys by the cheque.

(4) Where a person who purchases or otherwise acquires goods pays the whole or substantially the whole of the amount paid by him or her for the goods by means of a cheque that came into his or her possession or under his or her control as set out in paragraph (2)(a),

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the goods shall, for the purposes of subsection (2), be deemed to have come into his or her possession or under his or her control in the circumstances in which the cheque came into his or her possession or under his or her control.

(5) For the purposes of paragraph (2)(c), goods shall not be taken to have been purchased with or out of moneys to which this section applied unless the whole, or substantially the whole, of the moneys paid for the goods were moneys to which this section applied.

(6) For the purposes of section 203, moneys or goods to which this section applies shall be deemed to be forfeited goods and, upon moneys or goods to which this section applies being seized under a seizure warrant, they shall, for the purposes of sections 204 to 208E (inclusive) and Part XIV, be deemed to be forfeited goods, and those provisions apply accordingly.

(7) Where, in any proceedings for the condemnation or recovery of moneys or goods to which this section applies and which have been seized under a seizure warrant, the Court is satisfied that the relevant narcotic goods are goods reasonably suspected of having been imported into Australia in contravention of this Act, the Court shall, for the purposes of the proceedings, treat the narcotic goods as narcotic goods which have been imported into Australia in contravention of this Act unless it is established to the satisfaction of the Court that the narcotic goods were not imported into Australia or were not imported into Australia in contravention of this Act.

(8) Without limiting any powers that are conferred on a Court by the provisions of this Act specified in subsection (6) and notwithstanding any other provision of this Act:

(a) where moneys or goods in the possession or under the control of a person are seized under a seizure warrant, a Court in which proceedings are brought for the condemnation or recovery of the moneys or goods shall, if it is satisfied that the moneys or goods were, at the time when they were so seized, owned by another person who, when he or she became the owner of the moneys or goods, did not know, and

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had no reason to suspect, that the moneys or goods had come into the possession or under the control of the first-mentioned person in circumstances referred to in subsection (2), direct that the moneys or goods be delivered to that other person; and

(b) where moneys or goods in the possession or under the control of the licensee of a warehouse are seized under a seizure warrant, a Court in which proceedings are brought for the condemnation or recovery of the moneys or goods shall direct that the moneys or goods be delivered to the licensee if it is satisfied that:

(i) the moneys came into the possession or under the control of the licensee by reason of his or her storing in the warehouse narcotic goods imported into Australia in contravention of this Act or by reason of his or her selling goods that were acquired by him or her with or out of any such moneys; or

(ii) the goods were purchased or otherwise acquired by him or her out of moneys that so came into his or her possession or under his or her control;

as the case may be, and is also satisfied that the licensee did not know that the goods stored in the warehouse were narcotic goods or that they had been imported into Australia in contravention of this Act.

230 Forfeited packages and goods

The forfeiture of any goods shall extend to the forfeiture of the packages in which the goods are contained and the forfeiture of any package under section 229 shall extend to all goods packed or contained in the package.

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Division 2—Penalties

231 Assembly for unlawful purposes

(1) All persons to the number of 2 or more assembled with the intention of:

(a) importing prohibited imports; or

(b) smuggling; or

(c) preventing the seizure, or rescuing after seizure, of any prohibited imports or smuggled goods;

commit an offence punishable upon conviction by imprisonment for a period not exceeding 2 years.

(2) This section does not apply to, or in relation to, narcotic goods.

(2A) This section does not apply to, or in relation to, unmarked plastic explosives.

Note: Section 72.13 of the *Criminal Code* creates an offence of importing or exporting unmarked plastic explosives.

(3) An offence against this section is punishable upon summary conviction.

Note: Most offences dealing with the importation and exportation of narcotic goods are located in Part 9.1 of the *Criminal Code*.

232A Rescuing goods and assaulting officers

Whoever:

(a) rescues any goods which have been seized, or, before or at or after seizure, staves, breaks or destroys any goods or documents relating thereto with the intention of preventing the seizure thereof or the securing of the same or the proof of any offence; or

(b) assaults, resists, molests, obstructs or endeavours to intimidate any person assisting an officer in the execution of the officer's duty;

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commits an offence and shall be liable, upon summary conviction, to a fine not exceeding 5 penalty units or to imprisonment for any period not exceeding 2 years.

233 Smuggling and unlawful importation and exportation

(1) A person shall not:

(a) smuggle any goods; or

(b) import any prohibited imports; or

(c) export any prohibited exports; or

(d) unlawfully convey or have in his or her possession any smuggled goods or prohibited imports or prohibited exports.

(1AA) A person who contravenes subsection (1) commits an offence punishable upon conviction:

(a) in the case of an offence against paragraph (1)(a) or an offence against paragraph (1)(d) in relation to smuggled goods—as provided by subsection 233AB(1); or

(b) in any other case—as provided by subsection 233AB(2).

(1AB) Subsection (1AA) is an offence of strict liability, to the extent that it relates to paragraphs (1)(b), (c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2) It shall not be lawful for any person to convey or have in his or her possession without reasonable excuse (proof whereof shall lie upon him or her) any smuggled goods or prohibited imports.

(3) It shall not be lawful for any person to convey or have in his or her possession any prohibited exports with intent to export them or knowing that they are intended to be unlawfully exported.

(4) Merchandise on board a ship or aircraft calling at any port or airport in Australia, but intended for and consigned to some port or airport or place outside Australia, shall not be deemed to be unlawfully imported into Australia if the goods are specified on the ship's or aircraft's manifest and are not transhipped or landed in Australia or are transhipped or landed by authority.

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(5) This section does not apply to, or in relation to, narcotic goods.

(6) The Minister must lay before each House of the Parliament, not later than the first sitting day of that House after 1 October each year, a report about any conduct by officers of Customs that, apart from subsection 233BABA(1), would constitute an offence against a law of the Commonwealth or of a State or Territory relating to the possession or conveyance, or facilitation of the conveyance, of prohibited imports, prohibited exports or smuggled goods.

233A Master not to use or allow use of ship for smuggling etc.

(1) The master of a ship or the pilot of an aircraft shall not intentionally use his or her ship or aircraft, or intentionally suffer her to be used, in smuggling, or in the importation of any goods in contravention of this Act, or in the exportation or conveyance of any goods in contravention of this Act.

(1A) Subsection (1) does not apply if the goods smuggled, imported, exported or conveyed are narcotic goods.

Note: Most offences dealing with the importation and exportation of narcotic goods are located in Part 9.1 of the *Criminal Code*.

(1B) Subsection (1) does not apply if the goods smuggled, imported, exported or conveyed are unmarked plastic explosives.

Note: Section 72.13 of the *Criminal Code* creates an offence of importing or exporting unmarked plastic explosives.

(2) A person who contravenes subsection (1) commits an offence punishable upon conviction:

(b) in the case of an offence committed in relation to the smuggling of goods—as provided by subsection 233AB(1); or

(c) in any other case—as provided by subsection 233AB(2).

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233AB Penalties for offences against sections 233 and 233A

(1) Where an offence is punishable as provided by this subsection, the penalty applicable to the offence is:

(a) where the Court can determine the amount of the duty that would have been payable on the smuggled goods to which the offence relates if those goods had been entered for home consumption on:

(i) where the date on which the offence was committed is known to the Court—that date; or

(ii) where that date is not known to the Court—the date on which the prosecution for the offence was instituted;

a penalty not exceeding 5 times the amount of that duty; or

(b) where the Court cannot determine the amount of that duty, a penalty not exceeding 1,000 penalty units.

(2) Where an offence is punishable as provided by this subsection, the penalty applicable to the offence is:

(a) where the Court can determine the value of the goods to which the offence relates, a penalty not exceeding:

(i) 3 times the value of those goods; or

(ii) 1,000 penalty units;

whichever is the greater; or

(b) where the Court cannot determine the value of those goods—a penalty not exceeding 1,000 penalty units.

233BAA Special offence relating to tier 1 goods

(1) Subject to subsection (3), the regulations may provide that:

(a) specified performance enhancing drugs; and

(b) specified non-narcotic drugs; and

(c) other specified goods;

constitute tier 1 goods.

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(2) The regulations must not specify an item for the purposes of subsection (1) unless:

(a) its importation is prohibited, either absolutely or on condition, by the Customs (Prohibited Imports) Regulations; or

(b) its exportation is prohibited, either absolutely or on condition, by the Customs (Prohibited Exports) Regulations.

(3) If the regulations made for the purposes of subsection (1) prescribe a quantity of a drug specified for those purposes to be the critical quantity, the specified drug does not constitute tier 1 goods unless it is of a quantity that exceeds the critical quantity.

(4) A person commits an offence against this subsection if:

(a) the person intentionally imported goods; and

(b) the goods were tier 1 goods and the person was reckless as to that fact; and

(c) their importation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the importation, that approval had not been obtained.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

(4A) Subject to subsection (4B), absolute liability applies to paragraph (4)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(4B) For the purposes of an offence against subsection (4), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (4)(c)(ii) had not been obtained at the time of the importation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(5) A person commits an offence against this subsection if:

(a) the person intentionally exported goods; and

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(b) the goods were tier 1 goods and the person was reckless as to that fact; and

(c) their exportation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the exportation, that approval had not been obtained.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

(5A) Subject to subsection (5B), absolute liability applies to paragraph (5)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(5B) For the purposes of an offence against subsection (5), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (5)(c)(ii) had not been obtained at the time of the exportation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(6) A person convicted or acquitted of an offence against subsection (4) or (5) in respect of particular conduct is not liable to any proceeding under section 233 in respect of that conduct.

233BAB Special offence relating to tier 2 goods

(1) The regulations may provide that:

(a) specified firearms, munitions and military warfare items of any kind including combat vests and body armour; and

(b) specified knives, daggers and other like goods; and

(c) specified chemical compounds; and

(d) specified anti-personnel sprays and gases; and

(e) specified fissionable or radioactive substances; and

(f) specified human body tissue; and

(g) specified human body fluids; and

(h) items of child abuse material; and

(i) counterfeit credit, debit and charge cards; and

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(j) other specified goods;

constitute tier 2 goods.

(2) The regulations must not specify an item for the purposes of subsection (1) unless:

(a) its importation is prohibited, either absolutely or on condition, by the Customs (Prohibited Imports) Regulations; or

(b) its exportation is prohibited, either absolutely or on condition, by the Customs (Prohibited Exports) Regulations.

(4) For the purposes of subsection (1), an item is taken to be an item of child abuse material if it is a document or other goods:

(a) that depicts a person, or a representation of a person, who:

(i) is, or appears to be, under 18 years of age; and

(ii) is, or appears to be, a victim of torture, cruelty or physical abuse;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(b) that describes a person who:

(i) is, or is implied to be, under 18 years of age; and

(ii) is, or is implied to be, a victim of torture, cruelty or physical abuse;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(c) that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:

(i) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

(ii) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

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(d) the dominant characteristic of which is the depiction, for a sexual purpose, of:

(i) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or

(ii) a representation of such a sexual organ or anal region; or

(iii) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;

in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(e) that describes a person who is, or is implied to be, under 18 years of age and who:

(i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

(ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(f) that describes:

(i) a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or

(ii) the breasts of a female person who is, or is implied to be, under 18 years of age;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(g) that is a doll or other object that resembles:

(i) a person who is, or appears to be, under 18 years of age; or

(ii) a part of the body of such a person;

if a reasonable person would consider it likely that the doll or other object is intended to be used by a person to simulate sexual intercourse (within the meaning of the *Criminal Code*).

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(4A) The matters to be taken into account in deciding for the purposes of subsection (4) whether reasonable persons would regard a particular document or other goods as being, in all the circumstances, offensive, include:

(a) the standards of morality, decency and propriety generally accepted by reasonable adults; and

(b) the literary, artistic or educational merit (if any) of the material; and

(c) the general character of the material (including whether it is of a medical, legal or scientific character).

(5) A person commits an offence against this subsection if:

(a) the person intentionally imported goods; and

(b) the goods were tier 2 goods and the person was reckless as to that fact; and

(c) their importation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the importation, that approval had not been obtained.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

(5A) Subject to subsection (5B), absolute liability applies to paragraph (5)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(5B) For the purposes of an offence against subsection (5), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (5)(c)(ii) had not been obtained at the time of the importation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(6) A person commits an offence against this subsection if:

(a) the person intentionally exported goods; and

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(b) the goods were tier 2 goods and the person was reckless as to that fact; and

(c) their exportation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the exportation, that approval had not been obtained.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

(6A) Subject to subsection (6B), absolute liability applies to paragraph (6)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(6B) For the purposes of an offence against subsection (6), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (6)(c)(ii) had not been obtained at the time of the exportation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(7) A person punished for an offence against subsection (5) or (6) in respect of particular conduct cannot be punished, in respect of that conduct, for an offence against:

(a) section 233; or

(b) Division 361 of the *Criminal Code* (about international firearms trafficking).

Note: A similar provision for the opposite case to paragraph (b) is set out in section 361.6 of the *Criminal Code*.

233BABAA UN-sanctioned goods

(1) The regulations may prescribe specified goods as UN-sanctioned goods.

(2) Regulations made for the purposes of subsection (1) may provide that specified goods are only UN-sanctioned goods if:

(a) they are imported from, or exported to, a specified place; or

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(b) the origin, or the final destination, of the goods is a specified place; or

(c) other specified circumstances apply in relation to the goods.

(3) The regulations must not prescribe goods for the purposes of subsection (1) unless:

(a) either:

(i) the importation of the goods is prohibited, either absolutely or on condition, by the *Customs (Prohibited Imports) Regulations 1956*; or

(ii) the exportation of the goods is prohibited, either absolutely or on condition, by the *Customs (Prohibited Exports) Regulations 1958*; and

(b) the regulation under which that importation or exportation is prohibited gives effect to a decision that:

(i) the Security Council has made under Chapter VII of the Charter of the United Nations; and

(ii) Article 25 of the Charter requires Australia to carry out;

in so far as that decision requires Australia to apply measures not involving the use of armed force.

Note: Articles 39 and 41 of the Charter provide for the Security Council to decide what measures not involving the use of armed force are to be taken to maintain or restore international peace and security.

(4) For the purposes of paragraph (3)(b), a regulation may be taken to give effect to a decision:

(a) whether or not it is made for the sole purpose of giving effect to the decision; and

(b) whether or not it has any effect in addition to giving effect to the decision.

233BABAB Special offences for importation of UN-sanctioned goods

Offence for individuals

(1) An individual commits an offence if:

(a) the individual intentionally imported goods; and

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(b) the goods were UN-sanctioned goods and the individual was reckless as to that fact; and

(c) their importation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the importation, that approval had not been obtained.

(2) Subject to subsection (3), absolute liability applies to paragraph (1)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(3) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (1)(c)(ii) had not been obtained at the time of the importation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Penalty for individuals

(4) An offence under subsection (1) is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding the amount worked out under subsection (5), or both.

(5) For the purposes of subsection (4), the amount is:

(a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:

(i) 3 times the value of the goods; or

(ii) 2,500 penalty units;

(b) if the Court cannot determine the value of those goods—2,500 penalty units.

Offence for bodies corporate

(6) A body corporate commits an offence if:

(a) the body corporate imported goods; and

(b) the goods were UN-sanctioned goods; and

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(c) their importation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the importation, that approval had not been obtained.

(7) Subsection (6) does not apply if the body corporate proves that it took reasonable precautions, and exercised due diligence, to avoid contravening that subsection.

Note: The body corporate bears a legal burden in relation to a matter in subsection (7) (see section 13.4 of the *Criminal Code*).

(8) Strict liability applies to paragraphs (6)(a) and (b).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(9) Subject to subsection (10), absolute liability applies to paragraph (6)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(10) For the purposes of an offence against subsection (6), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (6)(c)(ii) had not been obtained at the time of the importation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Penalty for bodies corporate

(11) An offence under subsection (6) is punishable on conviction by a fine not exceeding:

(a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:

(i) 3 times the value of the goods;

(ii) 10,000 penalty units; or

(b) if the Court cannot determine the value of those goods—10,000 penalty units.

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Person not liable to other proceedings

(12) A person convicted or acquitted of an offence against subsection (1) or (6) in respect of particular conduct is not liable to proceedings under section 233 in respect of that conduct.

233BABAC Special offences for exportation of UN-sanctioned goods

Offence for individuals

(1) An individual commits an offence if:
  (a) the individual intentionally exported goods; and
  (b) the goods were UN-sanctioned goods and the individual was reckless as to that fact; and
  (c) their exportation:
    (i) was prohibited under this Act absolutely; or
    (ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the exportation, that approval had not been obtained.

(2) Subject to subsection (3), absolute liability applies to paragraph (1)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(3) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (1)(c)(ii) had not been obtained at the time of the exportation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Penalty for individuals

(4) An offence under subsection (1) is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding the amount worked out under subsection (5), or both.

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(5) For the purposes of subsection (4), the amount is:

(a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:

(i) 3 times the value of the goods;

(ii) 2,500 penalty units; or

(b) if the Court cannot determine the value of those goods—2,500 penalty units.

Offence for bodies corporate

(6) A body corporate commits an offence if:

(a) the body corporate exported goods; and

(b) the goods were UN-sanctioned goods; and

(c) their exportation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the exportation, that approval had not been obtained.

(7) Subsection (6) does not apply if the body corporate proves that it took reasonable precautions, and exercised due diligence, to avoid contravening that subsection.

Note: The body corporate bears a legal burden in relation to a matter in subsection (7) (see section 13.4 of the *Criminal Code*).

(8) Strict liability applies to paragraphs (6)(a) and (b).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(9) Subject to subsection (10), absolute liability applies to paragraph (6)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(10) For the purposes of an offence against subsection (6), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (6)(c)(ii) had not been obtained at the time of the exportation.

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Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Penalty for bodies corporate

(11) An offence under subsection (6) is punishable on conviction by a fine not exceeding:

(a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:

(i) 3 times the value of the goods;

(ii) 10,000 penalty units; or

(b) if the Court cannot determine the value of those goods—10,000 penalty units.

Person not liable to other proceedings

(12) A person convicted or acquitted of an offence against subsection (1) or (6) in respect of particular conduct is not liable to proceedings under section 233 in respect of that conduct.

233BABAD Offences involving tobacco products

(1) A person commits an offence if:

(a) the person imports goods; and

(b) the goods are tobacco products; and

(c) the person imports the goods with the intention of defrauding the revenue.

(2) A person commits an offence if:

(a) the person conveys, or has in the person's possession, goods; and

(b) the goods are tobacco products; and

(c) the person knows that the goods were imported with intent to defraud the revenue.

(2A) A person commits an offence if:

(a) the person imports goods; and

(b) the goods are tobacco products; and

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(c) the person imports the goods reckless as to whether there would be defrauding of the revenue.

(2B) A person commits an offence if:

(a) the person conveys, or has in the person's possession, goods; and

(b) the goods are tobacco products; and

(c) the person is reckless as to whether the goods were imported with intent to defraud the revenue.

(3) In a prosecution for an offence against subsection (2) or (2B), it is not necessary to prove the identity of the person who imported the goods.

(4) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for not more than 15 years, a fine not exceeding the amount worked out under subsection (5), or both.

(4A) An offence against subsection (2A) or (2B) is punishable on conviction by imprisonment for not more than 10 years, a fine not exceeding the amount worked out under subsection (5A), or both.

(5) For the purposes of subsection (4), the amount is:

(a) if the Court can determine the amount of the duty that would have been payable on the goods if the goods had been entered for home consumption on:

(i) if the day on which the offence was committed is known to the Court—that day; or

(ii) if that day is not known to the Court—the day on which the prosecution for the offence was instituted;

30 times the amount of that duty; or

(b) otherwise—12,000 penalty units.

(5A) For the purposes of subsection (4A), the amount is:

(a) if the Court can determine the amount of the duty that would have been payable on the goods if the goods had been entered for home consumption on:

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(i) if the day on which the offence was committed is known to the Court—that day; or

(ii) if that day is not known to the Court—the day on which the prosecution for the offence was instituted;

20 times the amount of that duty; or

(b) otherwise—8,000 penalty units.

(6) A person convicted or acquitted of an offence against subsection (1), (2), (2A) or (2B) in respect of particular conduct is not liable to proceedings under section 233 in respect of that conduct.

233BABAE Offence for bringing restricted goods into Australia

(1) A person commits an offence of strict liability if:

(a) the person brings goods into Australia; and

(b) the goods are restricted goods.

Penalty: 1,000 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) Subsection (1) does not apply if the person brings the goods into Australia in accordance with a written permission given by the Minister for the purposes of this subsection.

(3) For the purposes of this Act, ***restricted goods*** are goods:

(a) that, if imported, would be prohibited imports; and

(b) that are prescribed by the regulations for the purposes of this definition.

(4) This section has effect only for purposes related to external affairs, including:

(a) for purposes related to giving effect to an international agreement to which Australia is a party; and

(b) for purposes related to addressing matters of international concern.

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233BABAF Using information held by the Commonwealth

Using information to commit offence

(1) A person commits an offence if:
  (a) the person obtains information; and
  (b) the information is restricted information; and
  (c) the person uses the information to commit an offence against a law of the Commonwealth, a State or a Territory.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the offence was an offence against a law of the Commonwealth, a State or a Territory.

Disclosing information to another person

(3) A person commits an offence if:
  (a) the person obtains information; and
  (b) the information is restricted information; and
  (c) the person discloses the information to another person; and
  (d) the person is not authorised or required under:
    (i) this Act; or
    (ii) the *Australian Border Force Act 2015*;
  to make that disclosure.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(4) In this section:

restricted information means information:
  (a) held in a computer owned, leased or operated by the Commonwealth for use for the purposes of the Customs Acts; and
  (b) to which access is restricted by an access control system associated with a function of the computer.

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233BABA Protection from criminal responsibility

(1) An officer of Customs who, in the course of duty, possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports, smuggled goods or restricted goods is not criminally responsible for an offence against a law of the Commonwealth or of a State or Territory relating to the possession, conveyance or facilitation of the conveyance of such goods.

(2) A person who:

(a) possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports, smuggled goods or restricted goods; and

(b) in doing so is acting in accordance with written instructions referring to this section issued by an officer of Customs acting in the course of duty;

is not criminally responsible for an offence against a law of the Commonwealth or of a State or Territory relating to the possession, conveyance or facilitation of the conveyance of such goods.

233BAC Evidence relating to approval for import or export

(1) In proceedings for an offence against subsection 233BAA(4) or (5), 233BAB(5) or (6), 233BABAB(1) or (4) or 233BABAC(1) or (4), a certificate of an authorised officer to the effect that the person charged with the offence had not obtained, as at the time of the import or export of the goods in respect of which the offence is alleged to have been committed, approval for the import or export is admissible as prima facie evidence that that approval had not been so obtained.

(2) For the purposes of this section, a document purporting to be a certificate referred to in subsection (1) is, unless the contrary is established, to be taken to be such a certificate and to have been duly given.

(3) A certificate is not to be admitted in evidence under subsection (1) in proceedings for an offence unless the person charged with the offence or a solicitor who has appeared for the person in those

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proceedings has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate, together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

233BA Evidence of Analyst

(1) The Comptroller-General of Customs may appoint a person to be an analyst for the purposes of this Act or Part 9.1 of the *Criminal Code*.

(2) Subject to subsection (4), in any proceedings for an offence against section 233BAA or Part 9.1 of the *Criminal Code*, or in any proceedings for an offence against section 233BAB, 233BABAB or 233BABAC, in so far as that section relates to specified anti-personnel sprays or gases, radioactive substances, human body tissue or human body fluid, a certificate of an analyst in an approved form stating, in respect of a substance in relation to which the offence is alleged to have been committed:

(a) that the analyst signing the certificate is appointed under subsection (1); and

(b) when and from whom the substance was received; and

(c) what, if any, labels or other means of identifying the substance accompanied it when it was received; and

(d) what container or containers the substance was contained in when it was received; and

(e) a description, and the weight, of the substance received; and

(f) when the substance, or a portion of it, was analysed; and

(g) a description of the method of analysis; and

(h) the results of the analysis; and

(j) how the substance was dealt with after handling by the analyst, including details of:

(i) the quantity retained; and

(ii) the name of the person, if any, to whom any retained quantity was given; and

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(iii) measures taken to secure any retained quantity;

is admissible as prima facie evidence of the matters in the certificate and of the correctness of the result of the analysis.

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(4) A certificate shall not be admitted in evidence under subsection (2) in proceedings for an offence unless the person charged with the offence or a solicitor who has appeared for the person in those proceedings has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

(5) Subject to subsection (6), where, under subsection (2), a certificate of an analyst is admitted in evidence in a proceeding for an offence, the person charged with the offence may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he or she had given evidence of the matters stated in the certificate.

(6) Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless:

(a) the prosecutor has been given at least 4 days notice of the person's intention to require the analyst to be so called; or

(b) the Court, by order, allows the person to require the analyst to be so called.

233C Offence for giving false or misleading information in relation to UN-sanctioned goods

Individuals

(1) An individual commits an offence if:

(a) an application is made in respect of UN-sanctioned goods under:

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(i) the *Customs (Prohibited Imports) Regulations 1956*; or
(ii) the *Customs (Prohibited Exports) Regulations 1958*; and

(b) the application is made in an approved form; and
(c) the individual signed the form; and
(d) information contained in, or information or a document accompanying, the form:
(i) is false or misleading; or
(ii) omits any matter or thing without which the information or document is misleading.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

Bodies corporate

(2) A body corporate commits an offence if:
(a) an application is made by or on behalf of the body corporate; and
(b) the application is in an approved form; and
(c) the application is made in respect of UN-sanctioned goods under:
(i) the *Customs (Prohibited Imports) Regulations 1956*; or
(ii) the *Customs (Prohibited Exports) Regulations 1958*; and
(d) information contained in, or information or a document accompanying, the form:
(i) is false or misleading; or
(ii) omits any matter or thing without which the information or document is misleading.

Penalty: 12,500 penalty units.

(3) Subsection (1) or (2) does not apply:
(a) as a result of subparagraph (1)(d)(i) or (2)(d)(i)—if the information or document is not false or misleading in a material particular; or

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(b) as a result of subparagraph (1)(d)(ii) or (2)(d)(ii)—if the information or document did not omit any matter or thing without which the information or document is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

234 Customs offences

(1) A person shall not:

(a) Evade payment of any duty which is payable;

(b) Obtain any drawback, refund, rebate or remission which is not payable;

(d) do any of the following:

(i) intentionally make or cause to be made a statement to an officer, reckless as to the fact that the statement is false or misleading in a material particular;

(ii) intentionally omit or cause to be omitted from a statement made to an officer any matter or thing, reckless as to the fact that without the matter or thing the statement is misleading in a material particular;

(iii) intentionally give information to another person, knowing that the information is false or misleading in a material particular and that the other person or someone else will include the information in a statement to an officer;

(iv) intentionally give information to another person, knowing that the information is misleading in a material particular because of the omission of other information that the person has and that the other person or someone else will include the information in a statement to an officer;

(h) Sell or offer for sale, any goods upon the pretence that such goods are prohibited imports or smuggled goods.

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(2) A person who contravenes subsection (1) commits an offence punishable upon conviction:

(a) in the case of an offence against paragraph (1)(a), by:

(i) where the Court can determine the amount of the duty on goods the payment of which would have been evaded by the commission of the offence if the goods had been entered for home consumption on:

(A) where the date on which the offence was committed is known to the Court—that date; or

(B) where that date is not known to the Court—the date on which prosecution for the offence was instituted;

a penalty not exceeding 5 times the amount of that duty and not less than 2 times that amount; or

(ii) where the Court cannot determine the amount of that duty, a penalty not exceeding 500 penalty units;

(b) in the case of an offence against paragraph (1)(b), by a penalty not exceeding 5 times the amount of drawback, refund, rebate or remission that was obtained by the commission of the offence and not less than 2 times that amount;

(c) subject to subsection (3), in the case of an offence against paragraph (1)(d), by a penalty not exceeding 250 penalty units; or

(d) in the case of an offence against paragraph (1)(h), by a penalty not exceeding 10 penalty units.

(2A) Where an export entry, a submanifest, an outward manifest or a withdrawal of such an entry, submanifest or manifest is taken, under section 119D, to have been communicated to the Department, then, for the purposes of paragraph (1)(d), the part of the communication constituting the transmission to the Department is treated as a statement made to the Comptroller-General of Customs.

(2B) Where an import entry, a withdrawal of such an entry, or a return for the purposes of subsection 69(8), subsection 70(7) or

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section 105C is taken, under section 71L, to have been communicated to the Department, then, for the purposes of paragraph (1)(d), the part of the communication constituting the transmission to the Department is treated as a statement made to the Comptroller-General of Customs.

(2BA) If an application for a refund, rebate or remission of duty is taken, under regulations made for the purposes of subsection 163(1AB), to have been communicated to the Department, then, for the purposes of paragraph (1)(d), the part of the communication constituting the transmission to the Department is treated as a statement made to the Comptroller-General of Customs.

(2BC) For the purposes of paragraph (1)(d), information provided to the Department under section 71 in the circumstances mentioned in section 71AAAB is taken to be a statement made to the Comptroller-General of Customs.

(2C) Nothing in subsection (2A), (2B), (2BA) or (2BC) is to be taken to affect the operation of any of the provisions of section 183.

(3) Where a person is convicted of an offence against paragraph (1)(d) in relation to a statement made, or an omission from a statement made, in respect of the amount of duty payable on particular goods, a Court may, in relation to that offence, impose a penalty not exceeding the sum of 100 penalty units and twice the amount of the duty payable on those goods.

234AA Places set aside for purposes of Act

(1) Where a place:

(a) is to be used by officers:

(i) for questioning, for the purposes of this Act or of any other law of the Commonwealth, passengers or crew disembarking from or embarking on a ship or aircraft; or

(ii) for examining, for such purposes, the personal baggage of such passengers or crew; or

(iii) as a holding place for such passengers or crew; or

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(b) is covered by a notice under subsection (3);

a Collector, or a person authorized by a Collector to do so, may cause signs to be displayed at or near the place that identify the place and state that entry into it by unauthorized persons is prohibited by this Act.

(2) Where a sign is displayed in relation to a place under subsection (1), a Collector, or a person authorized by a Collector to do so, may cause signs to be displayed at or near the place that identify the place and indicate (whether in words or images) that the use of:

(a) cameras or sound recorders; or

(b) mobile phones or other electronic forms of communication;

at the place by unauthorized persons is prohibited by this Act.

(3) The Comptroller-General of Customs may publish a notice in the *Gazette* specifying, as an area to which this section applies, an area of a port, or an airport, appointed under section 15.

(4) An area specified in such a notice must comprise one or more of the following areas:

(a) areas that are used by, or frequented by, passengers who have arrived in Australia until they have passed through the last point at which they or their baggage are normally subject to processing by officers;

(b) areas that are used by, or frequented by, passengers who are about to depart Australia after they have passed through the first point at which they are normally subject to processing by officers;

(c) areas that are in the vicinity of areas referred to in paragraph (a) or (b).

234A Unauthorised entry to places and on ships, aircraft or wharves

(1) A person shall not:

(a) enter into, or be in, a place in relation to which a sign is displayed under subsection 234AA(1); or

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(b) enter on or be in or on:

(i) a ship;

(ii) an aircraft;

(iii) the wharf at which, or the part of a wharf adjacent to which, a ship is berthed;

at a time when goods being the personal baggage of passengers or crew disembarking from, or embarking on that ship or aircraft are being examined, for the purposes of this Act, at or in the vicinity of the ship, aircraft, wharf or part of a wharf.

Penalty: 60 penalty units.

(1AA) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(1A) Subsection (1) does not apply if the person:

(a) enters into or is in the place, by the authority of a Collector; or

(ab) is the holder of a security identification card (within the meaning of section 213A) who:

(i) enters into, or is in, the place for the purposes of his or her employment; and

(ii) is not subject to a direction under subsection (1B); or

(b) enters on or is in or on, the ship, aircraft, wharf or the part of a wharf, by the authority of a Collector; or

(c) is a member of a crew disembarking from, or embarking on, a ship or aircraft; or

(d) is a passenger disembarking from, or embarking on, a ship or aircraft; or

(e) is included in a class of persons whom the Comptroller-General of Customs determines, in writing, to be exempt from this section.

(1B) A Collector may, at any time, by written notice given to a person who is the holder of a security identification card (within the

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meaning of section 213A), direct the person not to enter into, or be in or on:

(a) a place in relation to which a sign is displayed under subsection 234AA(1); or

(b) any of the following:

(i) a ship;

(ii) an aircraft;

(iii) the wharf at which, or the part of a wharf adjacent to which, a ship is berthed;

at a time when goods being the personal baggage of passengers or crew disembarking from, or embarking on that ship or aircraft are being examined, for the purposes of this Act, at or in the vicinity of the ship, aircraft, wharf or part of a wharf.

(2) Subsection (1) does not prohibit a person who has, or is a member of an authority which has, the management or control of a wharf or wharves or an airport or airports from entering on, or being in or on, a place, ship, aircraft, wharf or part of a wharf for the purposes of that management or control.

(3) In any proceedings for the prosecution of a person for an offence against subsection (1), evidence that a sign stating that entry into a place is prohibited by this Act was displayed at or near that place is prima facie evidence that the sign was so displayed in accordance with subsection 234AA(1).

234AB Unauthorised use of cameras and sound recorders

(1) An officer may direct a person, including a passenger disembarking from, or embarking on, a ship or aircraft:

(a) not to use:

(i) a camera or sound recorder; or

(ii) a mobile phone or other electronic form of communication;

at a place in relation to which a sign is displayed under subsection 234AA(2); or

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(b) not to operate a camera, or use an appliance to record or transmit sound, at a place (being a place that is part of a ship, of an aircraft or of a wharf) at a time when the personal baggage of passengers or crew disembarking from, or embarking on, a ship or aircraft, is being examined, for the purposes of this Act, at or in the vicinity of that place.

(2) Where an officer gives to a person a direction under subsection (1), the officer shall inform that person that failure to comply with that direction is an offence under this Act.

(3) A person shall not fail to comply with a direction given to that person by an officer in accordance with subsection (1).

Penalty: 30 penalty units.

(3A) Subsection (3) does not apply if the person has a reasonable excuse.

(3B) Subsection (3) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) In any proceedings for the prosecution of a person for an offence against subsection (3), evidence that a sign indicating that the use of:

(a) cameras or sound recorders; or

(b) mobile phones or other electronic forms of communication;

at a place is prohibited by this Act was displayed at or near that place is prima facie evidence that the sign was so displayed in accordance with subsection 234AA(2).

(5) In this section, ***camera*** includes any device for making or transmitting, or designed for use in the making or transmission of, images of objects.

(6) For the purposes of this section, a person shall be taken to use an appliance to transmit sound at a place if, and only if, the person uses the appliance to transmit sound, other than sound coming from the appliance, from the place to another place.

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234ABA Officers may direct unauthorised persons to leave restricted areas

(1) An officer may direct a person to leave a place in relation to which a sign is displayed under subsection 234AA(1) if the officer reasonably believes that the person is in that place in contravention of section 234A.

(2) The officer may, either acting alone or with the assistance of one or more other officers or protective service officers, use reasonable force to remove the person from the area if the person refuses to leave when so directed.

(3) However, in removing the person, the officer (and the persons assisting) must not use more force, or subject him or her to greater indignity, than is necessary or reasonable.

(4) In this section:

protective service officer means a protective service officer within the meaning of the *Australian Federal Police Act 1979*.

236 Aiders and abettors

For the purposes of a Customs prosecution (within the meaning of section 244), whoever aids abets counsels or procures or by act or omission is in any way directly or indirectly concerned in the commission of any offence against this Act shall be deemed to have committed such offence and shall be punishable accordingly.

237 Attempts

For the purposes of a Customs prosecution (within the meaning of section 244), any attempt to commit an offence against this Act shall be an offence against this Act punishable as if the offence had been committed.

239 Penalties in addition to forfeitures

All penalties shall be in addition to any forfeiture.

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240 Commercial documents to be kept

Keeping commercial documents

(1) A person who is the owner of goods imported into Australia shall keep all the relevant commercial documents relating to the goods that came into that person's possession or control before, or come into that person's possession or control on or after, the entry of those goods for any purpose, being documents that are necessary to enable a Collector to satisfy himself or herself of the correctness of the particulars shown in the entry until:

(a) if the goods are not ultimately entered for home consumption—the goods cease to be subject to customs control; and

(b) if the goods are entered, or ultimately entered, for home consumption—the expiration of the period of 5 years after the goods are so entered.

Penalty: 30 penalty units.

(1AA) A person who is the owner of goods imported into Australia must keep all the relevant commercial documents relating to the goods:

(a) that come into the person's possession or control before, or come into the person's possession or control on or after, a return is given to the Department under section 69, 70 or 105C in relation to those goods; and

(b) that are necessary to enable a Collector to satisfy himself or herself of the correctness of the particulars shown in the return;

until the end of the period of 5 years after the giving of the return.

Penalty: 30 penalty units.

(1A) A person who is the owner of goods exported from Australia must keep all the relevant commercial documents relating to the goods that:

(a) come into the person's possession or control at any time; and

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(b) are necessary to enable a Collector to satisfy himself or herself as to the correctness of information communicated by, or on behalf of, the person to the Department (whether in documentary or other form);

for the period of 5 years after the time when the goods were exported from Australia.

Penalty: 30 penalty units.

(1B) A person who, in Australia:

(a) causes goods to be imported into, or exported from, Australia; or

(b) receives goods that have been imported into, or are to be exported from, Australia;

must keep all the relevant commercial documents that come into the person's possession or control at any time and relate to the goods concerned or to their carriage to or from Australia, being documents that are necessary to enable a Collector to satisfy himself or herself:

(c) whether the person is complying with a Customs-related law; or

(d) as to the correctness of information communicated by, or on behalf of, the person to the Department (whether in documentary or other form);

for the period of 5 years from the time when the goods were imported into, or exported from, Australia.

Penalty: 30 penalty units.

(1C) Subsections (1), (1AA), (1A) and (1B) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Certified true copies of commercial documents

(2) Where, in accordance with the requirement of any law of the Commonwealth or of a State or Territory or with ordinary commercial practice a document that would, but for this

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subsection, be required to be kept in accordance with subsection (1), (1AA), (1A) or (1B), is required by that law or practice to be surrendered to another person, this section shall be taken to be complied with if, at all times after the document is so surrendered and during the period that the document would have been required to be kept, a true copy of the document, certified in accordance with subsection (3), is kept in its stead.

(3) Where a person is required to surrender a commercial document referred to in subsection (1), (1AA), (1A) or (1B) to another person for a reason set out in subsection (2), the first-mentioned person may make a true copy of the document and, if the first-mentioned person does so, and attaches to the copy a certificate, signed by the first-mentioned person:

(a) to the effect:

(i) that the copy is a true copy of the original document; and

(ii) that the original document has been surrendered to that other person for that reason; and

(b) providing particulars of the reason referred to in subparagraph (a)(ii);

the certified copy shall be treated by the Comptroller-General of Customs or a Collector, and shall be admissible in all courts, as if it were the original document.

Place, manner and form for keeping and storing commercial documents

(4) A person who is required by this section to keep a commercial document relating to particular goods may keep the document at any place (which may be a place outside Australia) and, subject to subsection (5), may keep the document in any form or store it in any manner.

(5) A person referred to in subsection (4) must:

(a) keep the document in such a manner as will enable a Collector readily to ascertain whether the goods have been properly described for the purpose of importation or

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exportation, as the case requires, and, in the case of goods entered for home consumption, properly valued or rated for duty; and

(b) if the document is in a language other than the English language—keep the document in such a way that a translation of the document into the English language can readily be made; or

(c) if the document is a record of information kept by a mechanical, electronic or other device—keep the record in such a way that a document setting out in the English language the information recorded or stored can be readily produced.

Penalty: 30 penalty units.

(5A) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Informing authorised officer of whereabouts of commercial document

(6) An authorised officer may, by written notice given to a person who is required under this section to keep a commercial document, require the person to inform the officer within a reasonable period, and in a manner specified in the notice, of the whereabouts of the document.

(6A) If:

(a) a notice is given to a person under subsection (6); and

(b) the person fails to comply with the notice;

the person commits an offence of strict liability punishable, on conviction, by a penalty not exceeding 30 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Altering and defacing commercial documents

(6B) A person who is required to keep a commercial document must not alter or deface the document.

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Penalty: 30 penalty units.

(6BA) Subsection (6B) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(6C) A document is not taken to be altered or defaced for the purposes of subsection (6B) merely because a notation or marking is made on it in accordance with ordinary commercial practice.

Exceptions to requirements to keep commercial documents

(7) This section shall not require the keeping of any commercial documents:

(a) by a company that has gone into liquidation and that has been dissolved;

(b) by a class of persons that is declared by the regulations to be a class to which this section does not apply; or

(c) of a kind declared by the regulations to be commercial documents to which this section does not apply.

240AA Authorised officer may require person to produce commercial documents

(1) An authorised officer may, by written notice given to a person who is required under section 240 to keep a commercial document, require the person to produce, either at the business premises in Australia of the person or at a place in Australia specified in the notice, and within a period specified in the notice, for inspection by an authorised officer:

(a) if the document is in writing—the document; or

(b) if the document is a record of information kept by a mechanical, electronic or other device—the information.

Note 1: A person who keeps a record of information by means of a mechanical, electronic or other device must comply with a requirement made under subsection (1) by producing the information in a document setting out the information in a form the authorised officer can understand. See section 25A of the *Acts Interpretation Act 1901*.

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Note 2: Failure to produce a commercial document following a requirement made under subsection (1) is an offence. See section 243SB.

(2) The period that may be specified in a notice given under subsection (1) must not be less than 14 days after the notice is given.

240AB Verifying communications to Department

Scope and purpose

(1) This section applies to a person who makes a communication (however described) to the Department under this Act or gives someone else information for inclusion in such a communication.

(1A) The regulations may provide that specified communications, or specified kinds of communications, are exempt from this section.

(2) The purpose of this section is to help officers of Customs to verify the content of communications made to the Department and to trace information included in communications made to the Department to its source.

Requirements to keep records

(3) If the person makes the communication to the Department, the person must keep, in accordance with this section, for the period of 5 years after the communication is made, a record that verifies the contents of the communication.

Penalty: 30 penalty units

(3A) If the person (the ***giver***) gives information to another person (the ***recipient***) for the recipient or someone else to include in a communication to the Department, the giver must keep, in accordance with this section, for 5 years after the information is given, one or more records that:

(a) either verify the information or, if the giver was given the information by someone else, verify that the giver was given

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that information and identify the person who gave it to the giver; and

(b) verify the fact that the giver gave the information to the recipient; and

(c) identify the recipient.

Penalty: 30 penalty units.

(3B) Subsections (3) and (3A) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Place, manner and form for keeping and storing records

(4) A person who is required by this section to keep a record may keep the record at any place (which may be a place outside Australia) and, subject to subsection (5), may keep the record in any form or store it in any manner.

(5) A person referred to in subsection (4) must:

(a) if the record is in a language other than the English language—keep the record in such a way that a translation of the record into the English language can readily be made; or

(b) if the record is kept by a mechanical, electronic or other device—keep the record in such a way that a document setting out in the English language the information recorded or stored can be readily produced.

Informing authorised officer of whereabouts of record

(6) An authorised officer may, by written notice given to a person who is required under this section to keep a record, require the person to inform the officer within a reasonable period, and in a manner specified in the notice, of the whereabouts of the record.

(7) If:

(a) a notice is given to a person under subsection (6); and

(b) the person fails to comply with the notice;

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the person commits an offence of strict liability punishable, on conviction, by a penalty not exceeding 30 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Interaction with section 240

(8) To avoid doubt, this section does not affect the operation of section 240.

Note: Section 240 requires owners of imported or exported goods, and certain persons who deal with such goods, to keep for 5 years relevant commercial documents relating to the goods.

240AC Authorised officer may require person to produce record

(1) An authorised officer may, by written notice given to a person who is required under section 240AB to keep a record, require the person to produce, either at the business premises in Australia of the person or at a place in Australia specified in the notice, and within a period specified in the notice, for inspection by an authorised officer:

(a) if the record is in writing—the record; or

(b) if the record is kept by a mechanical, electronic or other device—the information contained in the record.

Note 1: A person who keeps a record of information by means of a mechanical, electronic or other device must comply with a requirement made under subsection (1) by producing the information in a document setting out the information in a form the authorised officer can understand. See section 25A of the *Acts Interpretation Act 1901*.

Note 2: Failure to produce a record following a requirement made under subsection (1) is an offence. See section 243SB.

(2) The period that may be specified in a notice given under subsection (1) must not be less than 14 days after the notice is given.

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Division 3—Recovery of pecuniary penalties for dealings in narcotic goods

243A Interpretation

(1) In this Division, unless the contrary intention appears:

benefit includes service or advantage.

cheque includes a bill, promissory note or other security for money.

Court means the Federal Court of Australia.

dealing, in relation to property of a person, includes:

(a) if a debt is owed to that person—making a payment to any person in reduction of the amount of the debt;

(b) removing the property from Australia; and

(c) receiving or making a gift of the property.

effective control, in relation to property, or an interest in property, has the meaning given by section 243AB.

interest, in relation to property, means:

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property;

whether present or future and whether vested or contingent.

moneys means moneys in the form of cash.

Official Trustee means the Official Trustee in Bankruptcy.

pecuniary penalty means a pecuniary penalty referred to in section 243B.

penalty amount, in relation to an order under section 243B against a person, means the amount that the person is liable to pay the Commonwealth under the order.

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petition means a petition under the *Bankruptcy Act 1966*.

police officer means:

(a) a member or special member of the Australian Federal Police; or

(b) a member of the police force of a State or Territory.

property means real or personal property of every description, whether situated in Australia or elsewhere and whether tangible or intangible and includes an interest in any such real or personal property.

restraining order means an order made under paragraph 243E(2)(c).

trustee in bankruptcy means:

(a) in relation to a bankruptcy—the trustee of the estate of the bankrupt; or

(b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement; or

(c) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement; or

(d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate.

(2) Where a person who has obtained possession or control of a cheque, or was paid moneys by a cheque, in any of the circumstances set out in subsection (3), receives, in respect of the cheque, moneys in the form of cash, the moneys so received shall, for the purposes of this Division, be deemed to be moneys that came into his or her possession or under his or her control, or were paid to him or her, in the circumstances in which he or she obtained possession or control of the cheque, or was paid the moneys by the cheque.

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(3) For the purposes of this Division, a person shall be taken to engage in a prescribed narcotics dealing if:

(a) he or she sells or otherwise deals in, or agrees to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act; or

(b) he or she imports, or agrees to import, narcotic goods into Australia in contravention of this Act; or

(c) he or she exports, or agrees to export, narcotic goods from Australia in contravention of this Act; or

(d) he or she keeps, or agrees to keep, in his or her possession narcotic goods imported into Australia in contravention of this Act; or

(e) he or she conspires with another person or other persons to import any narcotic goods into Australia, or to export any narcotic goods from Australia, in contravention of this Act; or

(f) he or she aids, abets, counsels or procures, or is in any way knowingly concerned in, the sale of, or other dealing in, narcotic goods imported into Australia in contravention of this Act, the importation of narcotic goods into Australia, or the exportation of narcotic goods from Australia, in contravention of this Act, or the keeping in the possession of any person of narcotic goods imported into Australia in contravention of this Act.

Note: Goods are imported or exported in contravention of this Act if they are imported or exported in breach of a prohibition under this Act: see subsection 4(4A).

(4) A reference in this Division to a benefit derived by a person includes a reference to:

(a) a benefit derived, directly or indirectly, by the person; and

(b) a benefit derived, directly or indirectly, by another person at the request or direction of the first person.

(4A) A reference in this Division to the property of a person includes a reference to property in respect of which the person has a beneficial interest.

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(5) Where, upon application being made to the Court under subsection 243E(1) and supported by an affidavit made by a police officer or an officer of Customs stating that he or she believes that any property is the property of a person, the Court makes a restraining order against that property, for the purposes of this Division, the property shall, while that order applies to the property, be deemed to be the property of that person.

(6) A reference in this Division to a proceeding for the recovery of a pecuniary penalty shall be read as a reference to a proceeding instituted under section 243B for an order under subsection (1) of that section.

243AB Effective control of property

(1) Property, or an interest in property, may be subject to the effective control of a person within the meaning of this Division whether or not the person has:

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property.

(2) Without limiting the generality of any other provision of this Division, in determining:

(a) whether or not property, or an interest in property, is subject to the effective control of a person; or

(b) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of a person;

regard may be had to:

(c) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;

(d) a trust that has a relationship to the property; and

(e) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (c) or trusts of the kind referred to in paragraph (d), and other persons.

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(3) For the purposes of paragraph (2)(e), family relationships are taken to include (without limitation) relationships between persons covered by section 4AAA.

243B Pecuniary penalties

(1) Subject to subsection (7), the Minister, the Commissioner of Police, the Comptroller-General of Customs or the Director of Public Prosecutions may institute a proceeding in the Court, on behalf of the Commonwealth, for an order that a person pay a pecuniary penalty to the Commonwealth in respect of:

(a) a particular prescribed narcotics dealing engaged in by him or her; or

(b) prescribed narcotics dealings engaged in by him or her during a particular period.

(2) If, in a proceeding instituted under subsection (1), the Court is satisfied that the person in relation to whom the order is sought:

(a) has engaged in a particular prescribed narcotics dealing; or

(b) has, during a particular period, engaged in prescribed narcotics dealings;

the Court shall assess, in accordance with section 243C, the value of the benefits derived by the person by reason of his or her having engaged in that dealing, or in prescribed narcotics dealings during that period, as the case may be, and order the person to pay to the Commonwealth a pecuniary penalty equal to the value as so assessed.

(3) The Court may order a person to pay a pecuniary penalty under subsection (2) in relation to a particular prescribed narcotics dealing, or prescribed narcotics dealings during a particular period, whether or not the person has been convicted of an offence, or proceedings have been instituted in respect of any offence, committed in relation to that dealing or any of those dealings and whether or not any moneys or other goods have been seized under section 229A in relation to that dealing or any of those dealings.

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(4) An amount payable by a person to the Commonwealth in accordance with an order made under subsection (2) shall, for all purposes, be deemed to be a civil debt due by the person to the Commonwealth.

(5) An order made by the Court under subsection (2) may be enforced as if it were an order made by the Court in civil proceedings instituted by the Commonwealth against the person to recover a debt due by the person to the Commonwealth.

(6) This section applies to and in relation to moneys that come, or other property that comes, into the possession or under the control of a person either within or outside Australia, and to benefits that are provided for a person either within or outside Australia.

(7) A proceeding under subsection (1) may be commenced:
  (a) if the proceeding relates to a particular prescribed narcotics dealing engaged in by a person after the commencement of this section—within 6 years after that dealing took place; or
  (b) if the proceeding relates to prescribed narcotics dealings during a particular period, being a period that commenced after the commencement of this section—within 6 years after the end of that period.

243C Assessment of pecuniary penalty

(1) In this section, a reference to the defendant in relation to a proceeding under section 243B shall be read as a reference to a person against whom an order is sought in that proceeding.

(2) In a proceeding under section 243B, the value of the benefits derived by the defendant by reason of his or her having engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period shall be assessed by the Court having regard to the evidence before the Court concerning all or any of the following matters:
  (a) the moneys, or the value of the property other than moneys, that came into the possession or under the control of:
    (i) the defendant; or

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(ii) another person at the request or by the direction of the defendant;

by reason of the defendant's having engaged in that dealing or in prescribed narcotics dealings during that period;

(b) the value of any benefit, other than a benefit of the kind referred to in paragraph (a) that was provided for:

(i) the defendant; or

(ii) another person at the request or by the direction of the defendant;

by reason of the defendant's having engaged in that dealing or in prescribed narcotics dealings during that period;

(c) in the case of a prescribed narcotics dealing that consisted of selling or otherwise dealing in narcotic goods—the market value, at the time of the dealing, of similar or substantially similar narcotic goods;

(d) in the case of a prescribed narcotics dealing that consisted of the doing of any act or thing other than selling or otherwise dealing in narcotic goods—the amount that was, or the range of amounts that were, at the time the dealing occurred, ordinarily paid for the doing of a similar or substantially similar act or thing;

(e) the value of the defendant's property before, during and after he or she engaged in that dealing, or before, during and after that period, as the case may be;

(f) the defendant's income and expenditure before, during and after he or she engaged in that dealing, or before, during and after that period, as the case may be.

(3) Where evidence is given in a proceeding under section 243B that the value of the defendant's property during or after the defendant engaged in a particular prescribed narcotics dealing, or during, or after the end of, a particular period during which he or she engaged in prescribed narcotics dealings, exceeded the value of the defendant's property before he or she engaged in that dealing, or before the commencement of that period, then, for the purposes of subsection (2) of that section, the Court shall, subject to subsection (4), treat the value of benefits derived by the defendant

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by reason of his or her having engaged in that dealing or in prescribed narcotics dealings during that period as being not less than the amount of the greatest excess.

(4) Where, after evidence has been given in a proceeding under section 243B that the value of the defendant's property during or after the defendant engaged in a particular prescribed narcotics dealing, or during, or after the end of, a particular period, exceeded the value of the defendant's property before he or she engaged in that dealing, or before the commencement of that period, the defendant satisfies the Court that the whole or a part of the excess was due to certain causes, being causes unrelated to his or her having engaged in that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be:

(a) if the defendant so satisfies the Court in respect of the whole of the excess—subsection (3) does not apply to the excess; or

(b) if the defendant so satisfies the Court in respect of a part of the excess—subsection (3) applies to and in relation to the excess as if it were reduced by the amount of that part.

(5) In a proceeding under section 243B, a police officer or an officer of Customs who is experienced in the investigation of narcotics offences may testify:

(a) with respect to the amount that, to the best of his or her information, knowledge and belief, was the market value of narcotic goods at a particular time or during a particular period; or

(b) with respect to the amount, or the range of amounts, that, to the best of his or her information, knowledge and belief, was the amount, or range of amounts, ordinarily paid at a particular time or during a particular period for the doing of an act or thing (not being the selling or other dealing in narcotic goods) comprising a prescribed narcotics dealing;

notwithstanding any rule of law or practice relating to hearsay evidence, and his or her testimony is prima facie evidence of the matters testified to.

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(6) In calculating, for the purposes of a proceeding under section 243B, the value of benefits derived by the defendant by reason of his or her having engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, any expenses or outgoings of the defendant in connection with that dealing, or those dealings, shall be disregarded.

(7) The Court, in quantifying the value of a benefit for the purposes of this section, may treat as the value of the benefit the value that the benefit would have had if derived at the time when the valuation is being made and, without limiting this, may have regard to any decline in the purchasing power of money between the time when the benefit was derived and the time when the valuation is being made.

(8) For the purposes of this section, where property of a person vests in a trustee in bankruptcy, the property shall be taken to continue to be the property of the person.

243CA Court may lift corporate veil etc.

(1) Where the Court is assessing the value of benefits derived by a person (in this section called ***the defendant***) because of engaging in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, the Court may treat as property of the defendant any property that, in the opinion of the Court, is subject to the effective control of the defendant.

(2) Where the Court makes, or has made, an order (in this section called ***a pecuniary penalty order***) that the defendant pay a pecuniary penalty under section 243B, the Court may:

(a) on application by the Minister, the Commissioner of Police, the Comptroller-General of Customs or the Director of Public Prosecutions; and

(b) if the Court is of the opinion that particular property is subject to the effective control of the defendant;

make an order declaring that the whole, or a specified part, of that property is available to satisfy the pecuniary penalty order.

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(3) Where the Court declares that property is available to satisfy a pecuniary penalty order:

(a) the order may be enforced against the property as if it were the defendant's; and

(b) a restraining order may be made in respect of the property as if it were the defendant's property.

(4) Where the Minister, the Commissioner of Police, the Comptroller-General of Customs or the Director of Public Prosecutions makes an application for an order under subsection (2) that property is available to satisfy a pecuniary penalty order against the defendant:

(a) the person (in this paragraph called ***the applicant***) who makes the application shall give written notice of the application to the defendant and to any person who the applicant has reason to believe may have an interest in the property; and

(b) the defendant and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

243D Presumption of illegality of importation

Where, in a proceeding under section 243B against a person, the Court is satisfied that the narcotic goods in relation to which the person is alleged to have engaged in a prescribed narcotics dealing or in prescribed narcotics dealings are goods reasonably suspected of having been imported into Australia in contravention of this Act, the Court shall, for the purposes of the proceeding, treat the narcotic goods as narcotic goods which have been imported into Australia in contravention of this Act unless it is established to the satisfaction of the Court that the narcotic goods were not imported into Australia or were not imported into Australia in contravention of this Act.

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243E Court may make restraining order against property

(1) Where the Minister, the Commissioner of Police, the Comptroller-General of Customs or the Director of Public Prosecutions has instituted a proceeding under section 243B for an order that a person (in this section referred to as the ***defendant***) pay a pecuniary penalty in relation to a particular prescribed narcotics dealing, or in relation to prescribed narcotics dealings during a particular period, the Minister, the Commissioner of Police, the Comptroller-General of Customs or the Director of Public Prosecutions may make application to the Court, *ex parte*, for an order under paragraph (2)(c) against one or more of the following:

(a) specified property of the defendant;

(b) all the property of the defendant (including property acquired after the making of the order);

(d) all the property of the defendant (including property acquired after the making of the order) other than specified property;

(e) specified property of a person other than the defendant.

(1A) The application under subsection (1) may be made:

(a) where the Court makes the order under section 243B—at any time before the liability of the defendant in respect of the pecuniary penalty has been discharged; or

(b) in any other case—at any time before the proceeding under section 243B is finally disposed of.

(2) Where:

(a) an application under subsection (1) is supported by:

(i) an affidavit of a police officer or an officer of Customs stating that he or she believes that:

(A) the defendant has engaged in the prescribed narcotics dealing to which the proceeding under section 243B relates, or in prescribed narcotics dealings during the period to which that proceeding relates; and

(B) benefits were derived by the defendant by reason of the defendant's having engaged in

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that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be;

and setting out the grounds on which he or she holds those beliefs; and

(ii) if the application seeks an order against specified property of the defendant—an affidavit of a police officer or an officer of Customs stating that he or she believes that the property is the property of the defendant and setting out the grounds on which he or she holds that belief; and

(b) the Court considers that, having regard to the matters contained in that affidavit or those affidavits, there are reasonable grounds for holding those beliefs;

the Court:

(c) shall, subject to subsection (2A), make an order:

(i) directing that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the order; and

(ii) if the Court is satisfied that the circumstances so require—direct the Official Trustee to take custody and control of the property, or such part of the property as is specified in the order; and

(d) may, subject to subsection (3), include in the order such provision (if any) in relation to the operation of the order as the Court thinks fit.

(2A) Where an application under subsection (1) seeks an order under paragraph (2)(c) against specified property of a person other than the defendant, the Court shall not make the order unless:

(a) the application is supported by an affidavit of a police officer or an officer of Customs stating that the officer believes that the property is subject to the effective control of the defendant; and

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(b) the Court considers that, having regard to the matters contained in that affidavit, there are reasonable grounds for holding that belief.

(3) Paragraph (2)(d) does not authorize the Court to include in the order a provision postponing the operation of the order.

(4) Without limiting the power of the Court under paragraph (2)(d), the order against property:

(a) may set out conditions subject to which the order is to apply to all of that property, or to a specified part of that property;

(b) may make provision for a review of the operation of the order by the Court; and

(c) may make provision for meeting the reasonable living and business expenses of the defendant out of that property, or out of a specified part of that property.

(4A) The Court shall not make provision of the kind referred to in paragraph (4)(c) unless it is satisfied that the defendant cannot meet the expenses concerned out of property that is not subject to the order.

(5) The Court may refuse to make the order if the Commonwealth refuses or fails to give to the Court such undertakings as the Court deems appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

(6) For the purposes of an application under subsection (1), the Minister, the Commissioner of Police, the Comptroller-General of Customs or the Director of Public Prosecutions may, on behalf of the Commonwealth, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

(7) Notwithstanding anything contained in the *Bankruptcy Act 1966*, moneys that have come into the possession, or under the control, of the Official Trustee in accordance with an order made under subsection (2) shall not be paid into the Common Investment Fund established in pursuance of section 20B of that Act.

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(8) Where the Official Trustee is given a direction under subparagraph (2)(c)(ii) in relation to property, the Official Trustee may do anything that is reasonably necessary for the purpose of preserving the property including, without limiting the generality of this:

(a) becoming a party to any civil proceedings affecting the property;

(b) ensuring that the property is insured;

(c) if the property consists, wholly or partly, of securities or investments—realising or otherwise dealing with the securities or investments; and

(d) if the property consists, wholly or partly, of a business:

(i) employing, or terminating the employment of, persons in the business; and

(ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis.

(9) Where the Official Trustee is given a direction under subparagraph (2)(c)(ii) in relation to shares in a company, the Official Trustee is entitled:

(a) to exercise the rights attaching to the shares as if it were the registered holder of the shares; and

(b) to do so to the exclusion of the registered holder.

(10) Neither paragraph (8)(c) nor subsection (9) limits the generality of the other.

(11) In proceedings dealing with an application for an order under paragraph (2)(c), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

243F Court may make further orders

(1AA) In this section:

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defendant has the same meaning as in section 243E.

(1) Where the Court makes, or has made, a restraining order (in this section called the ***original order***) against property of a person (in this section called the ***owner***), the Court may, at the time it makes the original order or at any subsequent time, make such orders in relation to that property as the Court considers just and, without limiting the power so conferred on the Court, the Court may, at any time or from time to time, make an order:

(a) varying the original order in respect of the property to which it relates or any provision included in the original order by virtue of paragraph 243E(2)(d);

(b) regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the original order;

(c) determining any question relating to the property to which the original order relates, including any question relating to the liabilities of the owner, and the exercise of the powers, or the performance of the duties, of the Official Trustee, with respect to the property to which the original order relates;

(d) directing:

(i) the owner; or

(ii) if the owner is not the defendant—the defendant; or

(iii) if the owner or the defendant is a body corporate—a director of the body corporate specified by the Court;

to give to the Minister, the Commissioner of Police, the Comptroller-General of Customs, the Director of Public Prosecutions or the Official Trustee, within a period specified in the order, a statement verified by the oath of the person making the statement, setting out such particulars of the property, or dealings with the property, of the owner or defendant as the Court thinks proper;

(e) for the examination on oath before the Court or Registrar of the Court of any person, including:

(i) the owner; or

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(ii) the defendant;

about the affairs (including the nature and location of any property) of:

(iii) anyone else who is either the owner or the defendant, or both; and

(iv) if the person to be examined is either the owner or defendant, or both—that person;

(ea) directing the owner or another person to do any act or thing necessary or convenient to be done to enable the Official Trustee to take custody and control of the property in accordance with the original order; or

(f) with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the Commonwealth in connection with the making of the original order.

(2) An application for an order under subsection (1) may be made:

(a) by the Official Trustee;

(b) by the Minister, the Commissioner of Police, the Comptroller-General of Customs or the Director of Public Prosecutions;

(c) by the owner; or

(d) with the leave of the Court, by any other person.

(2A) Where:

(a) the Court made the original order against the property in reliance on the engaging by a person (in this subsection called the ***defendant***) in a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and

(b) another person having an interest in the property applies to the Court for a variation of the order to exclude the interest from the order;

the Court shall grant the application if satisfied that the interest is not subject to the effective control of the defendant.

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(3) Where:

(a) a person is examined before the Court, or the Registrar of the Court, under an order made under subsection (1); or

(b) an order made under subsection (1) directs a person to furnish a statement to the Minister, the Commissioner of Police, the Comptroller-General of Customs, the Director of Public Prosecutions or the Official Trustee;

the person is not excused from:

(c) answering a question when required to do so by the Court, or by the Registrar of the Court; or

(d) furnishing the statement, or setting out particulars in the statement;

as the case may be, on the ground that the answer to the question, or the statement or particulars, might tend to incriminate the person or make the person liable to a forfeiture or penalty.

(3A) Where a person:

(a) is examined before the Court, or the Registrar of the Court; or

(b) furnishes a statement to the Minister, the Commissioner of Police, the Comptroller-General of Customs, the Director of Public Prosecutions or the Official Trustee;

under an order made under subsection (1), then:

(c) a statement or disclosure made by the person in answer to a question put in the course of the examination; or

(d) the statement so furnished;

as the case may be, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure referred to in paragraph (c), or of the statement referred to in paragraph (d), is not admissible against the person in any civil or criminal proceeding except:

(e) a proceeding for giving false testimony in the course of the examination, or in respect of the falsity of the statement, as the case may be; or

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(f) a proceeding for the recovery of a pecuniary penalty, for the purpose only of facilitating the assessment of the amount of the pecuniary penalty.

(4) In this section, unless the contrary intention appears:

(a) references to the original order shall be read as including references to the original order as varied under this section; and

(b) references to the Registrar of the Court shall be read as including references to a Deputy Registrar of the Court, a District Registrar of the Court and a Deputy District Registrar of the Court.

(5) In proceedings dealing with an application for an order under subsection (1), a witness is not required to answer a question or to produce a document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

243G Official Trustee to discharge pecuniary penalty

(1) Where:

(a) the Court makes an order under section 243B that a person pay a pecuniary penalty in relation to a particular prescribed narcotics dealing or in relation to prescribed narcotics dealings during a particular period; and

(b) at the time when the order is made, property is subject to a restraining order made, in reliance on the prescribed narcotics dealing or prescribed narcotics dealings, against:

(i) property of the person; or

(ii) property of another person in relation to which an order under subsection 243CA(2) is made;

the Court may include in the order under section 243B a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

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(2) Where:

(a) the Court makes an order under section 243B for a person to pay a pecuniary penalty in relation to a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and

(b) a restraining order is subsequently made against:

(i) property of the person; or

(ii) property of another person in relation to which an order under subsection 243CA(2) is made;

in reliance on the prescribed narcotics dealing or prescribed narcotics dealings;

the Court may include in the restraining order a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

(2A) If:

(a) the Court has made an order under section 243B that a person pay a pecuniary penalty in relation to a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and

(b) a restraining order is in force against:

(i) property of the person; or

(ii) property of another person in relation to which an order under subsection 243CA(2) is in force;

the Court may, on application by the Minister, the Commissioner of Police, the Comptroller-General of Customs or the Director of Public Prosecutions, direct the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of the property.

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(3) For the purposes of enabling the Official Trustee to comply with a direction given by the Court under subsection (1), (2) or (2A), the Court may, in the order in which the direction is given or by a subsequent order:

(a) direct the Official Trustee to sell or otherwise dispose of such of the property that is subject to the restraining order as the Court specifies; and

(b) appoint an officer of the Court or any other person to execute any deed or instrument in the name of a person who owns or has an estate, interest or right in the property and to do any act or thing necessary to give validity and operation to the deed or instrument.

(4) The execution of the deed or instrument by the person appointed by an order under subsection (3) has the same force and validity as if the deed or instrument had been executed by the person who owned or had the estate, interest or right in the property.

(5) Where the Official Trustee is given a direction under subsection (1), (2) or (2A) in relation to property, the Official Trustee shall not:

(a) if the property is money—apply the money in accordance with subsection (6) until the end of the appeal period; and

(b) if the property is not money—sell or otherwise dispose of the property until the end of the appeal period.

(6) Where the Official Trustee is given a direction under subsection (1), (2) or (2A) in relation to property, the Official Trustee shall, as soon as practicable after the end of the appeal period:

(a) if the property is money:

(i) apply the money in payment of the costs, charges, expenses and remuneration, of the kind referred to in subsection 243P(1), incurred or payable in connection with the restraining order and payable to the Official Trustee under the regulations; and

(ii) subject to subsection (7), credit an amount equal to the remainder of the money to the Confiscated Assets

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Account as required by section 296 of the *Proceeds of Crime Act 2002*; and

(b) if the property is not money:

(i) sell or otherwise dispose of the property;

(ii) apply the proceeds of the sale or disposition in payment of the costs, charges, expenses and remuneration of the kind referred to in subsection 243P(1), incurred or payable in connection with the restraining order or the sale or disposition and payable to the Official Trustee under the regulations; and

(iii) subject to subsection (7), credit an amount equal to the remainder of those proceeds to the Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*.

(7) Where the amounts to which subparagraph (6)(a)(ii) or (b)(iii) applies exceeds the penalty amount, the Official Trustee must:

(a) credit to the Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002* an amount equal to the penalty amount; and

(b) pay the balance to the person whose property was subject to the restraining order.

(8) Where the Official Trustee credits, in accordance with a direction under this section, an amount to the Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002* in satisfaction of a person's liability under an order under section 243B, the person's liability under the order shall, to the extent of the payment be deemed to be discharged.

(9) Where:

(a) a restraining order is made against property in reliance on a particular prescribed narcotics dealing engaged in by the person or prescribed narcotics dealings engaged in by the person during a particular period; and

(b) before or after the restraining order is made, an order under section 243B has been or is made against the person in

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reliance on the prescribed narcotics dealing or prescribed narcotics dealings;

the appeal period in respect of the property is the period ending:

(c) if the period provided for the lodging of an appeal against the making of the order under section 243B has ended without such an appeal having been lodged—at the end of that period; or

(d) if an appeal against the making of the order under section 243B has been lodged—when the appeal lapses or is finally determined.

243H Revocation of order under section 243E

(1) Where, after a restraining order has been made in relation to a proceeding for the recovery of a pecuniary penalty:

(a) no pecuniary penalty is imposed upon the determination of that proceeding;

(b) the pecuniary penalty imposed upon the determination of that proceeding is paid; or

(c) the Court is satisfied that it is, in all the circumstances, proper to do so;

the Court may, upon application being made to it by a person authorized to make an application under section 243F, revoke that order.

(2) The revocation of a restraining order that was made in relation to a proceeding for the recovery of a pecuniary penalty does not prevent the Court from making a further restraining order in relation to that proceeding.

(3) Without limiting the powers of the Court to make an order under subsection (1), the Court may revoke a restraining order upon the applicant:

(a) giving security satisfactory to the Court for the payment of any pecuniary penalty that may be imposed on him or her in the relevant proceeding; or

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(b) giving undertakings satisfactory to the Court concerning the property of the applicant.

(4) Where the Court revokes or has revoked a restraining order, the Court may make such order or orders as it deems proper for or in relation to the discharge of the Official Trustee concerned from all liability in respect of the exercise by it of the powers conferred on it, and the performance by it of the duties imposed on it, under this Division in respect of the property of the person to whom the restraining order related.

243J Pecuniary penalty a charge on property

(1) Where the Court makes, in relation to a proceeding (in this section referred to as the ***relevant proceeding***) for the recovery of a pecuniary penalty from a person, a restraining order against property, upon the making of the order, there is created, by force of this section, a charge, on all the property to which the order relates, to secure the payment to the Commonwealth of any pecuniary penalty that the person may be ordered to pay in the relevant proceeding.

(2) Where a charge is created by subsection (1) on any property of a person upon the making of a restraining order, the charge ceases to have effect in respect of the property:

(a) upon the order ceasing to apply to the property by reason of the variation or revocation of the order; or

(b) upon the determination of the relevant proceeding by way of the refusal of the Court to make an order for the payment of a pecuniary penalty by the person; or

(c) upon payment by the person of any pecuniary penalty that he or she has been ordered to pay in the relevant proceeding; or

(d) upon the person becoming a bankrupt; or

(e) upon the sale or other disposition of the property:

(i) in pursuance of a direction of the Court under section 243G; or

(ii) by the owner of the property with the consent of the Court or of the Official Trustee; or

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(f) upon the sale of the property to a *bona fide* purchaser for value who, at the time of purchase, has no notice of the charge;

whichever first occurs.

(3) The charge created on property by subsection (1):

(a) is subject to every charge or encumbrance to which the property was subject immediately before the order was made;

(b) has priority over all other encumbrances whatsoever; and

(c) subject to subsection (2), is not affected by any change of ownership of the property.

(4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind, the Official Trustee or the person who applied for the restraining order against that property may cause the charge so created to be registered under the provisions of that law and, if the Official Trustee or the person who applied for the restraining order, as the case may be, does so, a person who purchases or otherwise acquires the property after the registration of the charge shall, for the purposes of subsection (2), be deemed to have notice of the charge.

243K Contravention of restraining orders

(1) A person who intentionally contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence.

Penalty: Imprisonment for 5 years.

(2) Where:

(a) a restraining order is made against property;

(b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order; and

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(c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith;

the Minister, the Commissioner of Police, the Comptroller-General of Customs or the Director of Public Prosecutions may apply to the Court for an order that the disposition or dealing be set aside.

(3) Where an application is made under subsection (2) in relation to a disposition or dealing, the Court may make an order:

(a) setting the disposition or dealing aside as from the day on which it took place; or

(b) setting the disposition or dealing aside as from the day of the order under this subsection and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.

243L Sale of property before bankruptcy

(1) Where:

(a) the Commonwealth has, within 6 months before the presentation of a petition, or after the presentation of a petition, against a person, received moneys from the Official Trustee or an Official Receiver in pursuance of a direction under section 243G in relation to the liability of the person to pay a pecuniary penalty; and

(b) the person subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition;

the Commonwealth shall pay to the trustee in the bankruptcy an amount equal to the amount paid to the Commonwealth in accordance with the direction, less the taxed costs of the Minister, the Commissioner of Police, the Comptroller-General of Customs or the Director of Public Prosecutions in respect of the making of the direction under section 243G.

(2) Where the Commonwealth has paid to the trustee in bankruptcy an amount in accordance with subsection (1), the Commonwealth may

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prove in the bankruptcy for its debt as an unsecured creditor as if the order under section 243G had not been made.

(3) Notwithstanding anything contained in the *Bankruptcy Act 1966*, a person who purchases in good faith, property of a person who, after the purchase, becomes a bankrupt, under a sale of the property in pursuance of a direction given under section 243G acquires a good title to it as against the trustee in the bankruptcy.

243M Duties of the Official Trustee after receiving notice of presentation of creditor's petition etc.

(1) Where, after the Official Trustee has been directed under subsection 243G(1) or (2) to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the presentation of a creditor's petition against the person is given to the Official Trustee, the Official Trustee:

(a) shall refrain from taking action to sell property of the person in pursuance of any direction to do so contained in an order under that section; and

(b) shall not pay any moneys in pursuance of the direction to do so contained in the first-mentioned order;

until the petition has been dealt with by a bankruptcy court or has lapsed.

(2) Where, after the Official Trustee has been directed under subsection 243G(1) or (2) to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the reference to a bankruptcy court of a debtor's petition against the person is given to the Official Trustee, the Official Trustee:

(a) shall refrain from taking action to sell property of the person in pursuance of any direction to do so contained in an order under that section; and

(b) shall not pay any moneys in pursuance of the direction to do so contained in the first-mentioned order;

until a bankruptcy court has dealt with the petition.

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(3) Where a person who is liable to pay a pecuniary penalty becomes a bankrupt (whether on a creditor's petition or otherwise), any property of the person in the possession, or under the control, of the Official Trustee in accordance with an order made under this Division shall be deemed to be in the possession, or under the control, of the Official Trustee as, or on behalf of, the trustee of the estate of the bankrupt, and not otherwise.

(4) In this section, ***bankruptcy court*** means a court having jurisdiction in bankruptcy under the *Bankruptcy Act 1966*.

243N Protection of Official Trustee from personal liability in certain cases

(1) Where:

(a) the Court has made a restraining order directing the Official Trustee to take custody and control of property of a person;

(b) the Official Trustee has taken custody and control of any property in the possession, or on the premises, of the person without notice of any claim by another person in respect of that property; and

(c) the person did not, at the date of the order, have any beneficial interest in the property referred to in paragraph (b);

the Official Trustee is not personally liable for any loss or damage arising from its having taken custody and control of the property sustained by a person claiming the property or an interest in the property, or for the cost of proceedings taken to establish a claim to the property or to an interest in the property, unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of custody and control of the property.

(2) Where the Official Trustee has, in accordance with a restraining order, taken custody and control of property of a person specified in the order, the Official Trustee is not personally liable for any loss or damage arising from its having taken custody and control of the property (being loss or damage sustained by some other person claiming the property or an interest in the property), or for the cost

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of proceedings taken to establish a claim to the property, or to an interest in the property, unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of custody and control of the property.

(3) The Official Trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of the Commonwealth or of a State or Territory upon or in respect of property of which it has been directed by a restraining order to take custody and control, being rates, land tax or municipal or other statutory charges that fall due on or after the date of that order, except to the extent, if any, of the rents and profits received by the Official Trustee in respect of that property on or after the date of that order.

(4) Where the Official Trustee who has been directed by a restraining order to take custody and control of a business carried on by a person carries on that business, the Official Trustee is not personally liable for any payment in respect of long service leave for which the person was liable or for any payment in respect of long service leave to which a person employed by the Official Trustee in its capacity of manager of the business, or the legal personal representative of such a person, becomes entitled after the date of that order.

243NA Indemnification of Official Trustee

(1) The Commonwealth is by force of this subsection liable to indemnify the Official Trustee against any personal liability (including any personal liability as to costs) incurred by it for any act done, or omitted to be done, by it in the exercise, or purported exercise, of its powers and duties under this Division.

(2) Nothing in subsection (1) affects:
  (a) any right that the Official Trustee has, apart from that subsection, to be indemnified in respect of any personal liability referred to in that subsection; or

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(b) any other indemnity given to the Official Trustee in respect of any such personal liability.

(3) Where the Commonwealth makes a payment in accordance with the indemnity referred to in subsection (1), the Commonwealth has the same right of reimbursement in respect of the payment (including reimbursement under another indemnity given to the Official Trustee) as the Official Trustee would have if the Official Trustee had made the payment.

243NB Indemnification of Official Receivers etc.

(1) The Commonwealth shall indemnify a person to whom this subsection applies against any liability incurred by the person:

(a) for any act done negligently, or negligently omitted to be done, by the person in the performance of the person's duties in relation to this Division; or

(b) for any act done by the person in good faith in the purported performance of the person's duties in relation to this Division.

(2) Subsection (1) applies to:

(a) persons who are Official Receivers under the *Bankruptcy Act 1966*;

(b) persons who perform any of the duties of such an Official Receiver in relation to this Division; or

(c) persons who assist such an Official Receiver in the performance of the Official Receiver's duties in relation to this Division.

243P Costs etc. payable to Official Trustee

(1) The regulations may make provision for or in relation to:

(a) the costs, charges and expenses incurred in connection with; and

(b) the Official Trustee's remuneration in respect of;

the performance or exercise by the Official Trustee of functions, duties or powers under this Division.

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(2) An amount equal to each amount of remuneration that the Official Trustee receives under the regulations shall be paid to the Commonwealth.

(3) Where there are no regulations in relation to a matter referred to in subsection (1):

(a) the regulations referred to in section 288 of the *Proceeds of Crime Act 2002* shall apply, so far as they are applicable, and with appropriate changes, in relation to the matter; and

(b) a reference in this Division (other than in this subsection) to regulations in relation to the matter shall be taken to be a reference to the regulations referred to in section 288 of the *Proceeds of Crime Act 2002*.

243Q Notices

(1) Subject to subsection (2), where the Court makes a restraining order, or an order under section 243CA or 243F, against a person's property, the person who applied for the order (in this section called the ***applicant***) shall give the person written notice of the order.

(2) Where:

(a) the Court makes a restraining order against a person's property; and

(b) the Court is satisfied that it would be in the public interest to delay giving notice of the order to the person;

the Court may order that giving the person notice of the order be delayed for such period as is specified in the order under this subsection and the applicant shall give the person notice of the restraining order as soon as practicable after the end of the period specified.

243R Reduction of pecuniary penalty

(1) Where, before the Court makes an order directing a person to pay a pecuniary penalty in respect of a particular prescribed narcotics dealing engaged in by him or her, or of prescribed narcotics

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dealings engaged in by him or her during a particular period, any property of the person to which section 229A applied by reason of that prescribed narcotics dealing, or of a prescribed narcotics dealing during that period, had been seized as forfeited goods:

(a) if, before the imposition of the penalty, the property had been condemned or was deemed to have been condemned—the penalty shall be deemed to be reduced by an amount equal to the value of the property at the time when it was seized; and

(b) if, after the imposition of the penalty and before the penalty is paid, the property is condemned or is deemed to be condemned or the person consents to the forfeiture of the property—the liability of the person in respect of the penalty shall be deemed to be reduced by an amount equal to the value of the property at the time when it was seized; and

(c) if the penalty is paid before the property is condemned or is to be deemed to be condemned—the Commonwealth is liable to pay to the person an amount equal to the value of the property at the date of its seizure.

(2) After a pecuniary penalty is imposed on a person in respect of a particular prescribed narcotics dealing engaged in by the person, or of prescribed narcotics dealings engaged in by him or her during a particular period, property of the person to which section 229A applies by virtue of that dealing, or of such a dealing during that period, shall not be seized as forfeited goods.

(3) The Court may make an order, in respect of property to which section 229A applies, being property that has been seized as forfeited goods, determining the value, at the time when it was seized, of that property for the purposes of this section.

243S Jurisdiction of the Court

Jurisdiction is conferred on the Court to hear and determine applications under this Division.

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Division 4—Provisions relating to certain strict liability offences

243SA Failure to answer questions

(1) A person must not fail to answer a question that an officer, pursuant to a power conferred on the officer by this Act (other than section 106J or 195A or subsection 214AH(2)), requires the person to answer.

Penalty: 30 penalty units.

(2) A person must not fail to answer a question that a monitoring officer, pursuant to subsection 214AH(2), requires the person to answer, if:

(a) the person is the occupier of the relevant premises, or a representative of the occupier whom the occupier has nominated to a monitoring officer to answer questions under that subsection; or

(b) the person is not covered by paragraph (a) and no other person of the kind mentioned in that paragraph is present at the premises and available to answer questions put by the monitoring officer.

Penalty: 30 penalty units.

(3) If:

(a) an officer requires a person to answer a question under section 106J or 195A; and

(b) the officer informs the person of the officer's authority to ask the question; and

(c) the officer informs the person that it may be an offence not to answer the question;

the person must not fail to answer the question.

Penalty: 30 penalty units.

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(4) Subsections (1), (2) and (3) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

243SB Failure to produce documents or records

(1) A person must not fail to produce a document or record that an officer, pursuant to a power conferred on the officer by this Act other than a power conferred by section 71AAAO, 71DA, 71DL, 77Y, 87C, 114A or 118, requires the person to produce.

Penalty: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

243SC Preservation of the privilege against self-incrimination

(1) Subject to subsection (2), a person who would, apart from this subsection, be required to:

(a) answer a question under section 243SA; or

(b) produce a document or record under section 243SB;

need not comply with the requirement if so complying would:

(c) tend to incriminate the person; or

(d) result in further attempts to obtain evidence that would tend to incriminate the person.

(2) Subsection (1) does not apply, and the person must comply with the requirement, if the person has waived his or her rights under that subsection.

243T False or misleading statements resulting in loss of duty

(1) A person commits an offence if:

(a) the person:

(i) makes, or causes to be made, to an officer a statement (other than a statement in a cargo report or an outturn

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report) that is false or misleading in a material particular; or

(ii) omits, or causes to be omitted, from a statement (other than a statement in a cargo report or an outturn report) made to an officer any matter or thing without which the statement is false or misleading in a material particular; and

(b) either of the following applies:

(i) the amount of duty properly payable on the goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading;

(ii) the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis that the statement was not false or misleading exceeds the amount of refund or drawback properly payable (which may be nil).

(2) An offence against subsection (1) is an offence of strict liability.

(3) An offence against subsection (1) is punishable on conviction by a fine not exceeding the greater of:

(a) 60 penalty units; and

(b) the amount of the excess.

(3A) For the purposes of this section, a person is taken to cause to be made a statement (other than a statement in a cargo report or outturn report) that is false or misleading in a material particular if:

(a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement (other than a statement in a cargo report or outturn report) by the other person or someone else to an officer; and

(b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause such a statement to be made.

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(3B) For the purposes of this section, a person is taken to cause to be made an omission (a ***punishable omission***) from a statement (other than a statement in a cargo report or outturn report) of a matter or thing without which the statement is false or misleading in a material particular, if:

(a) the person gives to another person, for inclusion in a statement (other than a statement in a cargo report or an outturn report) by the other person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and

(b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause a punishable omission to be made.

(4) Subsection (1) does not apply if:

(a) a person (other than an officer) voluntarily gives written notice (an ***error notice***) to an officer doing duty in relation to the matter to which the statement relates, indicating that:

(i) the statement is false or misleading in a material particular; or

(ii) the statement is false or misleading in a material particular because of the omission of a matter or thing; and

(b) between the making of the statement and the person giving the error notice, a notice under section 214AD had not been given to:

(i) a person who made the statement or caused it to be made (the ***defendant***); or

(ii) a person who omitted, or caused to be omitted, from the statement a matter or thing without which the statement was false or misleading (the ***defendant***); and

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(c) if subparagraph (1)(b)(i) would apply apart from this subsection—the duty properly payable on the goods is paid in full before either of the following happens:
  (i) an infringement notice is given to the defendant for an offence against subsection (1);
  (ii) proceedings are commenced against the defendant for an offence against subsection (1); and

(d) if subparagraph (1)(b)(ii) would apply apart from this subsection and an amount of refund or drawback exceeding the amount (if any) properly payable has been paid before the time either of the following happens:
  (i) an infringement notice is given to the defendant for an offence against subsection (1);
  (ii) proceedings are commenced against the defendant for an offence against subsection (1);

the excess has been repaid before that time.

(4A) For the purposes of paragraph (4)(a), the error notice is taken not to be given voluntarily if it is given after:
  (a) an officer exercises a power under a Customs-related law to verify information in the statement; or
  (b) an infringement notice is served under Subdivision A of Division 5 on the defendant for an offence against subsection (1); or
  (c) proceedings are commenced against the defendant for an offence against subsection (1).

(5) Subsection (1) does not apply to a statement made by a person to an officer if:
  (a) the statement specifies that the person is uncertain about information included in the statement, and considers that, as a result of including that information, the statement might be false or misleading in a material particular; and
  (b) the statement identifies the information whose inclusion might make the statement false or misleading in a material particular; and

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(c) the statement sets out the reasons why the person is uncertain about the identified information.

(6) Subsection (1) does not apply to a statement made by a person to an officer if:

(a) the statement specifies that the person is uncertain whether, as a result of omitting information from the statement, the statement might be false or misleading in a material particular; and

(b) the statement identifies the omission of information that might make the statement false or misleading in a material particular; and

(c) the statement sets out the reasons for the person's uncertainty about the effect of omitting the information.

243U False or misleading statements not resulting in loss of duty

(1) A person commits an offence if:

(a) the person:

(i) makes, or causes to be made, to an officer a statement (other than a statement in a cargo report or an outturn report) that is false or misleading in a material particular; or

(ii) omits, or causes to be omitted, from a statement (other than a statement in a cargo report or an outturn report) made to an officer any matter or thing without which the statement is false or misleading in a material particular; and

(b) neither of the following applies:

(i) the amount of duty properly payable on particular goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading;

(ii) the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis that the statement was not false

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or misleading exceeds the amount of refund or drawback properly payable (which may be nil).

(2) An offence against subsection (1) is an offence of strict liability.

(3) The penalty for a conviction for an offence against subsection (1) is an amount not exceeding 60 penalty units for each statement that is found by the court to be false or misleading.

(3A) For the purposes of this section, a person is taken to cause to be made a statement (other than a statement in a cargo report or outturn report) that is false or misleading in a material particular if:

(a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement (other than a statement in a cargo report or outturn report) by the other person or someone else to an officer; and

(b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause such a statement to be made.

(3B) For the purposes of this section, a person is taken to cause to be made an omission (a ***punishable omission***) from a statement (other than a statement in a cargo report or outturn report) of a matter or thing without which the statement is false or misleading in a material particular, if:

(a) the person gives to another person, for inclusion in a statement (other than a statement in a cargo report or an outturn report) by the other person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and

(b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause a punishable omission to be made.

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(4) Subsection (1) does not apply to a statement if:

(a) a person (other than an officer) voluntarily gives written notice (an ***error notice***) to an officer doing duty in relation to the matter to which the statement relates, indicating that:

(i) the statement is false or misleading in a material particular; or

(ii) the statement is false or misleading in a material particular because of the omission of a matter or thing; and

(b) between the making of the statement and the person giving the error notice, a notice under section 214AD had not been given to either of the following:

(i) a person who made the statement or caused it to be made;

(ii) a person who omitted, or caused to be omitted, from the statement a matter or thing without which the statement was false or misleading.

(4A) For the purposes of paragraph (4)(a), the error notice is taken not to be given voluntarily if it is given after:

(a) an officer exercises a power under a Customs-related law to verify information in the statement; or

(b) an infringement notice for an offence against subsection (1) is given to:

(i) a person who made the statement or caused it to be made; or

(ii) a person who omitted, or caused to be omitted, from the statement a matter or thing without which the statement was false or misleading; or

(c) proceedings are commenced against a person described in subparagraph (b)(i) or (ii) of this subsection for an offence against subsection (1).

(5) In this section:

statement does not include:

(a) a statement made under Part XVA or XVB; or

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(b) a statement that a person who is or was a passenger on, or a member of the crew of, a ship or aircraft made in relation to his or her accompanied personal or household effects that were carried on the ship or aircraft.

243V False or misleading statements in cargo reports or outturn reports

(1) A person commits an offence if the person:

(a) makes, or causes to be made, to an officer a statement, in a cargo report or an outturn report, that is false or misleading in a material particular; or

(b) omits, or causes to be omitted, from a statement, in a cargo report or an outturn report, made to an officer any matter or thing without which the statement is false or misleading in a material particular.

(2) An offence against subsection (1) is an offence of strict liability.

(3) The penalty for a conviction for an offence against subsection (1) is an amount not exceeding 60 penalty units.

(4) For the purposes of subsection (1), a person is taken to cause to be made a statement described in paragraph (1)(a) if:

(a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement, in a cargo report or an outturn report, by the other person or someone else to an officer; and

(b) the other person or someone else makes a statement including the information to an officer, in a cargo report or an outturn report.

This subsection does not limit the ways in which a person may cause to be made a statement described in paragraph (1)(a).

(5) For the purposes of subsection (1), a person is taken to cause an omission described in paragraph (1)(b) to be made if:

(a) the person gives to another person, for inclusion in a statement, in a cargo report or an outturn report, by the other

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person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and

(b) the other person or someone else makes a statement including the information to an officer, in a cargo report or an outturn report.

This subsection does not limit the ways in which a person may cause an omission described in paragraph (1)(b) to be made.

243W Electronic communications to Department to be treated as statements to Comptroller-General of Customs

For the purposes of this Division, any electronic communication to the Department is taken to be a statement made to the Comptroller-General of Customs.

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Division 5—Infringement notices

243X Infringement notices—general

(1) A regulation may make provision enabling a person who is alleged to have committed an offence of strict liability or of absolute liability against this Act to pay to the Commonwealth a penalty specified in a notice (an ***infringement notice***) as an alternative to prosecution.

(2) The penalty must not exceed either:

(a) one-quarter of the maximum fine that a court could impose on the person as a penalty for that offence; or

(b) subject to subsection (3), whichever of the following applies:

(i) 15 penalty units if the person is an individual;

(ii) 75 penalty units if the person is a body corporate.

Note: Because of subsection 4B(3) of the *Crimes Act 1914*, the maximum penalty that may be specified in accordance with paragraph (a) in an infringement notice given to a body corporate may be 5 times greater than the maximum penalty that may be specified in accordance with that paragraph in an infringement notice given to an individual.

(3) Paragraph (2)(b) does not apply if:

(a) the penalty for the offence may be determined wholly or partly by reference to:

(i) an amount of duty that may be, or would have been, payable; or

(ii) the value of particular goods; and

(b) it is possible to determine that amount or that value.

243Y Infringement notices—forfeiture of goods that are prohibited imports if infringement notice paid

(1) Goods are taken to be condemned as forfeited to the Crown if:

(a) the goods are prohibited imports of a kind prescribed by a regulation for the purposes of this section; and

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(b) a person pays a penalty to the Commonwealth under an infringement notice as an alternative to prosecution for an offence for a contravention of paragraph 233(1)(b) (importing prohibited imports) in relation to the goods.

(2) In addition:
(a) the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods; and
(b) the title cannot be called into question.

(3) The goods must be dealt with and disposed of in accordance with the directions of the Comptroller-General of Customs.

(4) Subsections (1) and (2) cease to apply if the infringement notice is withdrawn.

243Z Infringement notices—right of compensation in certain circumstances for goods disposed of or destroyed

(1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown under subsection 243Y(1), a person may apply to a court of competent jurisdiction for compensation under this section.

(2) A right to compensation exists if:
(a) the goods were not prohibited imports; and
(b) the goods were not used or otherwise involved in the commission of an offence; and
(c) the person establishes, to the satisfaction of the court, that he or she is the rightful owner of the goods.

(3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to the market value of the goods at the time of their disposal or destruction.

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Part XIV—Customs prosecutions

244 Meaning of *Customs prosecution*

Customs prosecutions are proceedings:

(a) for the recovery of penalties under this Act, other than pecuniary penalties referred to in section 243B; or

(b) for the condemnation of ships, aircraft or goods seized as forfeited.

245 Institution of prosecutions

(1) Customs prosecutions may be instituted by the Comptroller-General of Customs by action, information or other appropriate proceeding:

(a) in the Supreme Court of a State;

(b) in the Supreme Court of the Australian Capital Territory;

(c) in the Supreme Court of the Northern Territory;

(d) in a County Court or District Court of a State;

(e) in a Local Court, being a Local Court of full jurisdiction, of South Australia or of the Northern Territory; or

(f) in a court of summary jurisdiction of a State, of the Australian Capital Territory or of the Northern Territory.

(2) Where a Customs prosecution for a pecuniary penalty that, but for this section, would exceed 400 penalty units is instituted in a Court referred to in paragraph (1)(d) or (e), the amount of that penalty that exceeds 400 penalty units shall be taken to have been abandoned.

(4) Where a Customs prosecution for a pecuniary penalty that, but for this subsection, would exceed 200 penalty units is instituted in a court referred to in paragraph (1)(f), the amount of that penalty that exceeds 200 penalty units shall be taken to have been abandoned.

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247 Prosecutions in accordance with practice rules

Every Customs prosecution in a court referred to in subsection 245(1) may be commenced prosecuted and proceeded with in accordance with any rules of practice (if any) established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

248 State Court practice

Subject to the provisions of this Act the provisions of the law relating to summary proceedings in force in the State or Territory where the proceedings are instituted shall apply to all Customs prosecutions before a Court of summary jurisdiction in a State or Territory, and an appeal shall lie from any conviction order for condemnation or order of dismissal to the Court and in the manner provided by the law of the State or Territory where such conviction or order is made for appeals from convictions or orders of dismissal, and notwithstanding anything to the contrary in the law of the State or Territory, an appeal shall lie from an order of dismissal to any court to which and in the manner in which an appeal lies from a conviction.

249 Commencement of prosecutions

Customs prosecutions may be instituted at any time within 5 years after the cause thereof.

250 Information to be valid if in words of Act

All informations summonses other originating processes convictions condemnations and warrants shall suffice if the offence or forfeiture is set forth as nearly as may be in the words of this Act.

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250A Property in goods subject to customs control

Where in any proceedings on behalf of the Commonwealth in relation to any goods subject to customs control it is necessary to allege any property in the goods, the goods may be alleged to be the property of the Collector without mentioning his or her name.

251 No objection for informality

No objection shall be taken or allowed to any information, summons or other originating process for any alleged defect therein in substance or in form or for any variance between such information, summons or other originating process and the evidence adduced at the hearing in support thereof, and the Court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable, and if any such defect or variance shall appear to the Court to be such that the defendant has been thereby deceived or misled it shall be lawful for the Court upon such terms as it may think just to adjourn the hearing of the case to some future day.

252 Conviction not to be quashed

No conviction warrant of commitment or condemnation order or other proceeding matter or thing done or transacted in relation to the execution or carrying out of any Customs Act shall be held void quashed or set aside by reason of any defect therein or want of form and no party shall be entitled to be discharged out of custody on account of such defect.

253 Protection to witnesses

No witness on behalf of the Minister, Comptroller-General of Customs or Collector in any Customs prosecution shall be compelled to disclose the fact that he or she received any information or the nature thereof or the name of the person who gave such information, and no officer appearing as a witness shall be compelled to produce any reports made or received by the

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officer confidentially in his or her official capacity or containing confidential information.

254 Defendant competent witness

(1) In every Customs prosecution the defendant shall be competent to give evidence.

(2) In every Customs prosecution except for an indictable offence or for an offence directly punishable by imprisonment the defendant shall be compellable to give evidence.

255 Averment of prosecutor sufficient

(1) In any Customs prosecution the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be prima facie evidence of the matter or matters averred.

(2) This section shall apply to any matters so averred although:
  (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or
  (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be prima facie evidence of the fact only.

(3) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4) The foregoing provisions of this section shall not apply to:
  (a) an averment of the intent of the defendant; or
  (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

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256 Proof of proclamation etc.

The production of the *Gazette* containing any proclamation gazette notice or regulation appearing to have been issued or made under this Act or the production of any document certified by the Comptroller-General of Customs to be a true copy of, or extract from any such proclamation, gazette notice, or regulation issued or made under this Act shall be prima facie evidence of the issue or making of such proclamation, gazette notice, or regulation, and that the same is in force.

257 Conduct by directors, employees or agents

(1) Where, in a Customs prosecution in respect of any conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

(a) by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) Where, in a Customs prosecution in respect of any conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, being an employee or

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agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate:

(a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.

259 Collector may levy on goods in his or her possession

When any pecuniary penalty adjudged against any person is unpaid the Collector may levy the same by sale of any goods belonging to such person which may then or thereafter be subject to customs control.

261 Imprisonment not to release penalty

No person shall be twice imprisoned upon the same conviction but the suffering of imprisonment for non-payment of a penalty shall not release the penalty or affect the right of the Commonwealth to collect the amount in any manner provided by this Act other than by imprisonment of the person convicted.

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263 Parties may recover costs

In a Customs prosecution, whether commenced before or after the commencement of this section, a court may award costs against a party, and, where an amount of costs is awarded against a party other than the prosecutor, section 259 and any provision of a law of a State or Territory that, by virtue of an Act other than this Act, applies in relation to the recovery of pecuniary penalties under this Act apply in relation to the recovery of the amount of costs so awarded as if it were a pecuniary penalty adjudged to be paid by the party under this Act.

264 Application of penalties

(1) All penalties and forfeitures recovered under any Customs Act shall be applied to such purposes and in such proportions as the Comptroller-General of Customs may direct.

(2) This section does not apply to:

(a) penalties recovered in proceedings under subsection 243B(1);

(b) penalties recovered in proceedings instituted by a member of the Australian Federal Police; or

(c) forfeitures of narcotic-related goods.

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Part XV—Tenders for rights to enter goods for home consumption at concessional rates

265 Interpretation

(1) In this Part:

determined, in relation to a quantity or a value, means determined in accordance with a tender.

item of a Customs Tariff and ***proposed item of a Customs Tariff*** have the same respective meanings as in Part XVI.

particular goods includes goods included in a particular class or kind of goods.

scheme means a scheme formulated by the Minister under section 266.

266 Tender schemes

(1) The Minister may, by instrument in writing, formulate a scheme for calling, and dealing with, tenders for the right to enter for home consumption during a period, or each of a number of periods, a determined quantity of particular goods, or particular goods of a determined value, at concessional rates of duty.

(2) A call for tenders that relates to determined quantities of particular goods shall include a statement that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the particular goods the subject of the call, the value of the goods is to be calculated by reference to a value set out in the statement as the value of an appropriate unit of the goods.

(3) In determining the value of an appropriate unit of particular goods to be set out in a statement referred to in subsection (2), the

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Minister shall have regard to the average value of the corresponding unit in relation to goods of the same kind that were imported into Australia and entered for home consumption during the financial year that ended on the 30 June immediately preceding the date on which the call for tenders is made.

(4) A call for tenders shall include a statement that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the particular goods the subject of the call, the prescribed percentage of the value of the goods is to be the percentage set out in the statement.

267 Undertakings relating to tenders

(1) Where, in accordance with a call for tenders made under a scheme, a person furnishes a tender for the right to enter for home consumption during a period, or each of a number of periods, a quantity to be determined in accordance with that tender of particular goods, or particular goods of a value to be determined in accordance with that tender, at rates of duty to be determined in accordance with that tender, that tender shall not be considered unless it is accompanied by an undertaking in writing by that person, in terms satisfactory to the Comptroller-General of Customs, that, if that tender is accepted and:

(a) the *Customs Tariff Act 1995* is so altered or proposed to be so altered that rates of duty determined in accordance with that tender are set out in items, or proposed items, of a Customs Tariff that are expressed to apply to goods as prescribed by by-law; and

(b) the Comptroller-General of Customs makes a determination under section 273 by virtue of which those items or proposed items apply to the quantity determined in accordance with that tender of those goods, or the quantity of those goods having the value determined in accordance with that tender, to be entered for home consumption by that person during that period, or each of those periods, as the case may be;

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the person will, during that period, or each of those periods, as the case may be, enter for home consumption under:

(c) any of those items, or proposed items; or

(d) any appropriate item, or proposed item, of a Customs Tariff that is not expressed to apply to goods as prescribed by by-law;

that quantity of those goods, or the quantity of those goods having that value.

(2) An undertaking referred to in subsection (1) that relates to a determined quantity of goods shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the value of those goods is to be calculated by reference to the value per unit of those goods as set out in the statement, being the value per unit set out in the statement included, in accordance with subsection 266(2), in the relevant call for tenders.

(3) An undertaking referred to in subsection (1) shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the prescribed percentage of the value of the goods is to be the percentage set out in the statement, being the percentage set out in the statement included, in accordance with subsection 266(4), in the relevant call for tenders.

(4) In this section, a reference to the relevant call for tenders in relation to an undertaking, shall be read as a reference to the call for tenders in accordance with which the tender to which the undertaking relates was furnished.

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268 Transfers of rights to enter goods for home consumption at concessional rates of duty

(1) A scheme may provide for the transfer, with the approval of the Comptroller-General of Customs, from one person to another of a right to enter for home consumption during a period, or each of a number of periods, a specified quantity of particular goods, or particular goods of a specified value, at concessional rates of duty.

(2) The Comptroller-General of Customs shall not give an approval to a transfer under a scheme of a right to enter for home consumption a specified quantity of particular goods, or particular goods of a specified value, unless the transferee:

(a) gives an undertaking, in writing, in terms satisfactory to the Comptroller-General of Customs, that, if by virtue of a determination under section 273 the items, or proposed items, of a Customs Tariff to which the undertaking given by the transferor in relation to the goods related were to apply to goods entered for home consumption by the transferee in the exercise of the right, the transferee will, in the exercise of that right, enter for home consumption those goods, or the quantity of those goods having that value, under any of those items or proposed items or under any appropriate item, or proposed item, of a Customs Tariff that is not expressed to apply to goods as prescribed by by-law; and

(b) if so required by a Collector, gives a security for payment of any penalty in connection with the undertaking that the transferee may become liable to pay to the Commonwealth under the *Customs Undertakings (Penalties) Act 1981*.

(3) An undertaking referred to in subsection (2) that relates to a specified quantity of goods shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the value of those goods is to be calculated by reference to the value per unit of those goods as set out in the statement, being a value per unit that was set out in

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the corresponding statement in the undertaking given by the transferor in relation to those goods.

(4) An undertaking referred to in subsection (2) shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the prescribed percentage of the value of the goods is to be the percentage set out in the statement, being the percentage set out in the corresponding statement in the undertaking given by the transferor in relation to those goods.

269 Revocation or variation of undertaking

A person who has given an undertaking in accordance with section 267 or 268 may, with the approval of the Comptroller-General of Customs, revoke or vary that undertaking.

269A Recovery of penalties

A penalty payable by a person under the *Customs Undertakings (Penalties) Act 1981* or the *Customs Securities (Penalties) Act 1981* is a debt due to the Commonwealth, and the Commonwealth may recover the amount of the penalty by action in a court of competent jurisdiction.

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Part XVA—Tariff concession orders

Division 1—Preliminary

269B Interpretation

(1) In this Part, unless the contrary intention appears:

capital equipment means goods, which if imported into Australia, would be goods to which Chapters 84, 85, 86, 87, 89 or 90 of Schedule 3 to the *Customs Tariff Act 1995* would apply.

Customs Tariff Act 1995 includes that Act as proposed to be altered by a Customs Tariff alteration proposed, or intended to be proposed, in the Parliament.

gazettal day, in relation to a TCO application, means:

(a) unless paragraph (b) applies—the day on which the Comptroller-General of Customs publishes a notice in respect of the application in the *Gazette* under subsection 269K(1); or

(b) if, in accordance with section 269N, the Comptroller-General of Customs publishes a notice in respect of the application in the *Gazette* under subsection 269K(1) in substitution for an earlier notice—the day on which the Comptroller-General of Customs publishes that substituted notice.

goods produced in Australia has the meaning given by section 269D.

last day for submission means:

(a) in relation to an original TCO application:

(i) so far as concerns a person invited by the Comptroller-General of Customs under section 269M to lodge a submission in respect of the TCO application—the day fixed in the notice inviting that submission; and

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(ii) so far as concerns any other person—the day occurring 50 days after the gazettal day; and

(b) in relation to an amended TCO application:

(i) so far as concerns a person invited under paragraph 269L(4B)(a) to lodge a further submission in respect of the amended TCO application—the day occurring 14 days after the notification containing that invitation; and

(ii) so far as concerns any other person—the day occurring 14 days after publication of a notice under paragraph 269L(4B)(b) inviting submissions in relation to the amended application.

lodged, in relation to a TCO application, includes taken to be lodged because of the operation of section 269J.

ordinary course of business has the meaning given by section 269E.

prescribed item means an item in Schedule 4 to the *Customs Tariff Act 1995* that is expressed to apply to goods that a TCO declares are goods to which the item applies.

repair, in relation to goods, includes renovate.

substitutable goods, in respect of goods the subject of a TCO application or of a TCO, means goods produced in Australia that are put, or are capable of being put, to a use that corresponds with a use (including a design use) to which the goods the subject of the application or of the TCO can be put.

TCO means a tariff concession order made under section 269P or 269Q or taken to be made under section 269P or 269Q because of the operation of section 269SC.

TCO application means:

(a) an application for a TCO under section 269F; or

(b) an application for a TCO under section 269F as amended under section 269L; or

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(c) a proposal for the issue of a TCO that is to be taken under section 269J to be a TCO application.

(2) Despite the definition of ***days*** in section 4, Sundays and public holidays are counted as days for the purpose of computing a period for the purposes of this Part but nothing in this subsection derogates from the operation of section 36 of the *Acts Interpretation Act 1901*.

(3) In determining whether goods produced in Australia are put, or are capable of being put, to a use corresponding to a use to which goods the subject of a TCO, or of an application for a TCO, can be put, it is irrelevant whether or not the first-mentioned goods compete with the second-mentioned goods in any market.

269C Interpretation—core criteria

For the purposes of this Part, a TCO application is taken to meet the core criteria if, on the day on which the application was lodged, no substitutable goods were produced in Australia in the ordinary course of business.

269D Interpretation—goods produced in Australia

(1) For the purposes of this Part, goods, other than unmanufactured raw products, are taken to be produced in Australia if the goods are wholly or partly manufactured in Australia.

(2) For the purposes of this Part, goods are to be taken to have been partly manufactured in Australia if at least one substantial process in the manufacture of the goods was carried out in Australia.

(3) Without limiting the meaning of the expression ***substantial process in the manufacture of the goods,*** any of the following operations or any combination of those operations does not constitute such a process:

(a) operations to preserve goods during transportation or storage;

(b) operations to improve the packing or labelling or marketable quality of goods;

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(c) operations to prepare goods for shipment;
(d) simple assembly operations;
(e) operations to mix goods where the resulting product does not have different properties from those of the goods that have been mixed.

269E Interpretation—the ordinary course of business

(1) For the purposes of this Part, other than section 269Q, goods (other than made-to-order capital equipment) that are substitutable goods in relation to goods the subject of a TCO application are taken to be produced in Australia in the ordinary course of business if:
(a) they have been produced in Australia in the 2 years before the application was lodged; or
(b) they have been produced, and are held in stock, in Australia; or
(c) they are produced in Australia on an intermittent basis and have been so produced in the 5 years before the application was lodged;
and a producer in Australia is prepared to accept an order to supply them.

(2) For the purposes of this Part, substitutable goods, in respect of goods the subject of a TCO application, are taken to have been produced in Australia in the ordinary course of business if:
(a) a producer in Australia could produce substitutable goods, in respect of goods the subject of the TCO application, with existing facilities; and
(b) the substitutable goods the producer could produce would be made-to-order capital equipment; and
(c) in the 5 years before the application was lodged, the producer has made goods requiring the same labour skills, technology and design expertise as the substitutable goods the producer could produce; and
(d) the producer is prepared to accept an order to supply substitutable goods in respect of goods the subject of the TCO application.

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(3) In this section:

made-to-order capital equipment means a particular item of capital equipment:

(a) that is made in Australia on a one-off basis to meet a specific order rather than being the subject of regular or intermittent production; and

(b) that is not produced in quantities indicative of a production run.

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Division 2—Making and processing TCO applications

269F Making a TCO application

(1) A person may apply to the Comptroller-General of Customs for a tariff concession order in respect of goods.

(2) An application must:
  (a) be in writing; and
  (b) be in an approved form; and
  (c) contain such information as the form requires; and
  (d) be signed in the manner indicated in the form.

(3) Without limiting the generality of paragraph (2)(c), a TCO application must contain:
  (a) a full description of the goods to which the application relates; and
  (b) a statement of the tariff classification that, in the opinion of the applicant, applies to the goods; and
  (c) if the applicant is not proposing to make use of the TCO to import the goods to which the application relates into Australia on the applicant's own behalf—the identity of the importer for whom the applicant is acting; and
  (d) particulars of all the inquiries made by the applicant (including inquiries made of prescribed organisations) to assist in establishing that there were reasonable grounds for believing that, on the day on which the application was lodged, there were no producers in Australia of substitutable goods.

(4) A TCO application may be lodged:
  (a) by leaving it at a place that has been allocated for lodgement of TCO applications by notice published on the Department's website; or
  (b) by posting it by prepaid post to a postal address specified in the approved form; or

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(c) by sending it by fax to a fax number specified in the approved form;

and the application is taken to have been lodged when the application, or a fax of the application, is first received by an officer of Customs.

(5) The day on which an application is taken to have been lodged must be recorded on the application.

269FA The applicant's obligation

It is the responsibility of an applicant for a TCO to establish, to the satisfaction of the Comptroller-General of Customs, that, on the basis of:

(a) all information that the applicant has, or can reasonably be expected to have; and

(b) all inquiries that the applicant has made, or can reasonably be expected to make;

there are reasonable grounds for asserting that the application meets the core criteria.

269G Withdrawing a TCO application

(1) A person who has lodged a TCO application under section 269F may withdraw the application at any time before a decision is made under section 269P or 269Q in relation to that application.

(2) A withdrawal of a TCO application:

(a) must be in writing; and

(b) must be lodged with the Comptroller-General of Customs in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and

(c) must have the day of its lodgement recorded.

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(3) If a notice informing of the lodgement of a TCO application is published in the *Gazette* before that application is withdrawn, the Comptroller-General of Customs must publish in the *Gazette*, as soon as practicable after the withdrawal is lodged, a notice:

(a) stating that the TCO application has been withdrawn; and

(b) describing the goods to which the TCO application related; and

(c) specifying the *Gazette* number and date of the previous notice relating to the TCO application; and

(d) specifying the date of withdrawal of the TCO application.

269H Screening the application

(1) Not later than 28 days after a TCO application is lodged, the Comptroller-General of Customs must:

(a) if he or she is satisfied:

(i) that the application complies with section 269F; and

(ii) that, having regard to the information disclosed in the application and to the particulars of the inquiries made by the applicant, there are reasonable grounds for believing that the applicant has discharged the responsibility referred to in section 269FA; and

(b) if he or she is not aware of any producer in Australia of substitutable goods;

by notice in writing given to the applicant, inform the applicant that the application is accepted as a valid application; and

(c) if he or she is not so satisfied; or

(d) if he or she is aware of such a producer;

by notice in writing given to the applicant, inform the applicant that the application is rejected and of the reasons for the rejection.

(2) If the Comptroller-General of Customs has not, within that period, accepted or rejected the application, this Part has effect as if the Comptroller-General of Customs had, immediately before the end of that period, informed the applicant, by notice in writing, that the application is accepted as a valid application.

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269HA Comptroller-General of Customs may reject a TCO application in relation to goods referred to in section 269SJ

(1) If, at any time during the period starting from the receipt of a TCO application and ending with the making of a TCO, the Comptroller-General of Customs becomes satisfied that the goods to which the application relates are goods in respect of which, under subsection 269SJ(1), the Comptroller-General of Customs is prevented from making a TCO, the Comptroller-General of Customs must:

(a) reject the application; and

(b) by notice in writing given to the applicant, inform the applicant that the application is rejected and of the reason for the rejection.

(2) If, at any time after the publication of a notice in the *Gazette* under subsection 269K(1), the Comptroller-General of Customs rejects the application to which the notice relates under subsection (1), the Comptroller-General of Customs must, as soon as practicable after rejecting the application, publish a notice in the *Gazette* stating that the application has been rejected and giving the reason for the rejection.

269J Applications taken to be lodged in certain circumstances

(1) If the Comptroller-General of Customs decides that it is desirable to consider making a TCO despite the absence of a TCO application, the Comptroller-General of Customs may declare, in writing, that he or she has so decided.

(2) A declaration under subsection (1) must include a proposal for the issue of the TCO in respect of the goods referred to in the declaration.

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(3) If the Comptroller-General of Customs makes a declaration under this section, this Part has effect as if:

(a) the proposal contained in the declaration were a TCO application lodged under section 269F on the day on which the declaration is made; and

(b) the application had been accepted under section 269H as a valid application on that day.

269K Processing a valid application

(1) As soon as practicable after accepting a TCO application as a valid application, the Comptroller-General of Customs must publish a notice in the *Gazette*:

(a) stating that the application has been lodged; and

(aa) identifying the applicant; and

(ab) if the applicant is not proposing to make use of the TCO to import the goods to which the application relates into Australia on the applicant's own behalf—identifying the importer for whom the applicant is acting; and

(b) providing a description of the goods to which the application relates including a reference to the Customs tariff classification that, in the opinion of the Comptroller-General of Customs, applies to the goods; and

(c) inviting any persons who consider that there are reasons why the TCO should not be made to lodge a submission with the Comptroller-General of Customs not later than 50 days after the gazettal day.

(2) A submission must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such information as the form requires; and

(d) be signed in the manner indicated in the form.

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(3) A submission:

(a) must be lodged with the Comptroller-General of Customs in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and

(b) must have the day of its lodgement recorded.

(4) If a person lodges a submission later than 50 days after the gazettal day in respect of a TCO application without being invited by the Comptroller-General of Customs to do so under section 269M, the Comptroller-General of Customs must not take the submission into account in determining whether to make a TCO.

269L Amendment of TCO applications

(1) If a person lodges a submission in respect of a TCO application within 50 days after the gazettal day, the Comptroller-General of Customs must, within 14 days after the end of that 50 day period, give the applicant for the TCO a notice in writing setting out:

(a) the name and address of each person who has lodged a submission within that period; and

(b) a short statement of the grounds on which each submission is based.

(2) The applicant may, within 28 days of receiving a notice under subsection (1) and having regard to the grounds on which each submission was made, notify the Comptroller-General of Customs, in writing, that he or she proposes to amend the application by altering the description of the goods the subject of the application, and set out in that notice the proposed amendment.

(3) The applicant must not, under subsection (2), propose an amendment of an application:

(a) that would cause the goods to which the application relates to be covered by a different Customs tariff classification to the one notified by the Comptroller-General of Customs in the *Gazette* under section 269K; or

(b) that would do otherwise than narrow the description of the goods as set out in the application.

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(4) As soon as practicable after, but not more than 7 days after, a proposed amendment of a TCO application was notified to the Comptroller-General of Customs, the Comptroller-General of Customs must consider the proposed amendment and:

(a) if the Comptroller-General of Customs is satisfied that the proposed amendment does not contravene subsection (3)—the Comptroller-General of Customs must inform the applicant that he or she is so satisfied and that subsection (4B) applies accordingly; or

(b) if the Comptroller-General of Customs is not so satisfied—the Comptroller-General of Customs must inform the applicant that he or she is not so satisfied and of the reasons for not being so satisfied.

(4A) If the Comptroller-General of Customs is not satisfied that a proposed amendment of a TCO does not contravene subsection (3), the Comptroller-General of Customs must continue to consider the application as it was originally made.

(4B) If the Comptroller-General of Customs is satisfied that the proposed amendment does not contravene the requirements of subsection (3), the Comptroller-General of Customs must, within 14 days after becoming so satisfied:

(a) notify the proposed amendment to each person who lodged a submission referred to in subsection (1) and, subject to the operation of subsections (5) and (6), invite that person, if he or she considers there are reasons not dealt with in the original submission why the TCO as proposed to be amended should not be made, to lodge a further submission within 14 days after being so notified; and

(b) publish a notice in the *Gazette* setting out the amended description in relation to the application and inviting persons who consider that there are reasons why the TCO as proposed to be amended should not be made to lodge a submission with the Comptroller-General of Customs no later than 14 days after the publication of that notice.

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(4C) The notification and subsequent publication of an amendment of a TCO application does not affect the gazettal day in relation to the application or any time limits calculated by reference to that gazettal day.

(5) If a person who lodged a submission referred to in subsection (1) notifies the Comptroller-General of Customs, in writing, within 14 days after being notified of a proposed amendment, that he or she no longer objects to the TCO application, the submission is taken to have been withdrawn.

(6) If a person who lodged a submission referred to in subsection (1) does not so notify the Comptroller-General of Customs, he or she is taken to wish to proceed with the submission as if it were a submission made in respect of the amended application.

269M Comptroller-General of Customs may invite submissions or seek other information, documents or material

(1) If the Comptroller-General of Customs considers that, in relation to a particular TCO application, a person may have reason to oppose the making of the TCO to which the application relates, he or she may, by notice in writing, invite the person to lodge a written submission with the Comptroller-General of Customs within a period specified in the notice ending not later than 150 days after the gazettal day.

(2) A submission must:
(a) be in writing; and
(b) be in an approved form; and
(c) contain such information as the form requires; and
(d) be signed in the manner indicated in the form.

(3) A submission:
(a) must be lodged with the Comptroller-General of Customs in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and
(b) must have the day of its lodgement recorded.

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(4) If the Comptroller-General of Customs considers that, in relation to a particular TCO application, any person (including the applicant or a person who has lodged a submission with the Comptroller-General of Customs) may be able to supply information or produce a document or material relevant to the consideration of the application, the Comptroller-General of Customs may, by notice in writing, request the supply of the information in writing or the production of the document or material within a period specified in the notice and ending not later than 150 days after the gazettal day.

(5) If a person refuses or fails to lodge a submission under subsection (1) or to supply information or produce a document or material under subsection (4) within the period allowed but subsequently lodges that submission, supplies the information or produces the document or material, the Comptroller-General of Customs must not take that submission, information, document or material into account in determining whether to make a TCO.

(6) At any time during the period of 150 days starting on the gazettal day, the Comptroller-General of Customs may, for the purpose of dealing with a TCO application, and despite Part 6 of the *Australian Border Force Act 2015*, give a copy of all, or of a part, of the application to a prescribed organisation with a view to obtaining the advice of the organisation in relation to the question whether there are producers in Australia of substitutable goods.

269N Reprocessing of TCO applications

(1) If, after gazettal day in respect of a TCO application but before a decision is made on the application, the Comptroller-General of Customs is satisfied that:

(a) because of an amendment of a Customs Tariff; or

(b) having regard to a decision of a court or of the Administrative Review Tribunal; or

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(c) having regard to written advice on the matter given by an officer of Customs;

the tariff classification that was stated in the notice published in the *Gazette* under section 269K to apply to the goods the subject of the application has not, with effect from the gazettal day or a later day, applied to the goods, the Comptroller-General of Customs must take action to reprocess the application.

(2) If the Comptroller-General of Customs is satisfied that, in publishing a notice in the *Gazette* under section 269K in relation to a TCO application, there has been a transcription error in the description of the goods the subject of the application including the tariff classification that is stated to apply to the goods, the Comptroller-General of Customs must take action to reprocess the application.

(3) Where the Comptroller-General of Customs is required to take action under subsection (1) or (2), he or she must, as soon as practicable after becoming so required, notify:

(a) the applicant; and

(b) all persons from whom submissions in relation to the application have been received; and

(c) all persons from whom submissions in relation to the application have been sought;

that, for the reasons specified in subsection (1) or (2), it is necessary to reprocess the application and that a new notice of the application will be published in the *Gazette* for that purpose.

(4) As soon as practicable after giving a notice under subsection (3), the Comptroller-General of Customs must publish in the *Gazette* a new notice under subsection 269K(1) in relation to the TCO application in substitution for the notice previously published.

(5) A person who had lodged a submission in relation to the original notice published under section 269K in respect of a TCO application may notify the Comptroller-General of Customs in writing, not later than 50 days after the day of publication of the substituted notice under that section, that he or she wishes to

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proceed with the submission, or wishes to proceed with it subject to stated modifications, as if it had been provided in response to the substituted notice and, where the Comptroller-General of Customs is so notified, the submission is to be treated as if it had been so provided on the day of that notification.

(6) If a TCO is made in respect of a TCO application that is reprocessed in accordance with this section, the day on which the TCO is to be taken to come into force is unaffected by the decision to reprocess that application.

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Division 3—Making and operation of TCOs

269P The making of a standard TCO

(1) If a TCO application in respect of goods, other than goods sent out of Australia for repair, has been accepted as a valid application under section 269H, the Comptroller-General of Customs must decide, not later than 150 days after the gazettal day, whether or not he or she is satisfied, having regard to:

(a) the application; and

(b) all submissions lodged with the Comptroller-General of Customs before the last day for submissions; and

(c) all information supplied and documents and material produced to the Comptroller-General of Customs in accordance with a notice under subsection 269M(4); and

(d) any inquiries made by the Comptroller-General of Customs;

that the application meets the core criteria.

(2) If the Comptroller-General of Customs fails to make a decision under subsection (1) in respect of a TCO application within 150 days after the gazettal day, the Comptroller-General of Customs is taken, for the purposes of subsection (1), at the end of that period, to have made a decision that he or she is not satisfied that the application meets the core criteria.

(3) If the Comptroller-General of Customs is satisfied that the application meets the core criteria, he or she must make a written order declaring that the goods the subject of the TCO application are goods to which a prescribed item specified in the order applies.

(4) The TCO must include:

(a) a description of the goods the subject of the order including a reference to the Customs tariff classification that, in the opinion of the Comptroller-General of Customs, applies to the goods; and

(b) a statement of the day on which the TCO is to be taken to have come into force; and

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(c) if subsection 269SA(1) applies in relation to the TCO—a statement of the day on which it ceases to be in force.

269Q The making of a TCO for goods requiring repair

(1) If a TCO application in respect of goods sent out of Australia for repair has been accepted as a valid application under section 269H, the Comptroller-General of Customs must decide, not later than 150 days after the gazettal day, whether or not he or she is satisfied, having regard to:

(a) the application; and

(b) all submissions lodged with the Comptroller-General of Customs before the last day for submissions; and

(c) all information supplied and documents and material produced to the Comptroller-General of Customs in accordance with a notice under subsection 269M(4);

that there is no one in Australia capable of repairing those goods in the ordinary course of business.

(2) If the Comptroller-General of Customs fails to make a decision under subsection (1) in respect of a TCO application within 150 days after the gazettal day, the Comptroller-General of Customs is taken, for the purposes of subsection (1), at the end of that period, to have made a decision that he or she is not satisfied of the matters referred to in that subsection in relation to the application.

(3) If the Comptroller-General of Customs is satisfied of the matters referred to in subsection (1) in relation to the application, he or she must make a written order declaring that the goods the subject of the TCO application are goods to which a prescribed item specified in the order applies.

(4) The TCO must include:

(a) a description of the goods the subject of the order including a reference to the Customs tariff classification that, in the opinion of the Comptroller-General of Customs, applies to the goods; and

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(b) a statement of the day on which the TCO is to be taken to have come into force.

(5) For the purposes of this section, a person is taken to be capable of repairing goods in the ordinary course of business if, in the ordinary course of business, the person is prepared to accept orders to repair those goods.

269R Notification of TCO decisions

(1) As soon as practicable after the Comptroller-General of Customs makes a decision under subsection 269P(1) or 269Q(1), the Comptroller-General of Customs must:

(a) by notice in writing, inform the applicant of the decision; and

(b) by notice published in the *Gazette*, inform all other interested persons of the decision.

(2) If the decision has led to the making of a TCO, the notice given to the applicant and published in the *Gazette* must include full particulars of the TCO.

(3) A failure to comply with subsection (1) or (2) does not affect the validity of the TCO concerned.

269S Operation of TCOs

(1) Subject to the operation of subsection 269SA(2), a TCO is to be taken to have come into force on:

(a) unless paragraph (b) applies—the day on which the application for the TCO was lodged; or

(b) if there was more than one application for the TCO—the day on which the earliest application for the TCO was lodged.

(2) Subject to section 269SG, a TCO applies in relation to the goods the subject of the TCO that were or are first entered for home consumption on or after the day on which the TCO is taken to have come into force.

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(3) Subject to the operation of subsection 269SA(1), a TCO continues in force until it is revoked under section 269SC or 269SD.

269SA Consequence of commencement or cessation of production before TCO decision

(1) If the Comptroller-General of Customs is satisfied, in relation to a TCO application:

(a) that the application meets the core criteria; and

(b) that on a day (the ***production start-up day***) occurring later than the day on which the application was lodged but before the making of the decision on the application, substitutable goods in relation to the goods the subject of the application commenced to be produced in Australia; and

(c) that if the production start-up day had occurred on the day on which the application was lodged, the Comptroller-General of Customs would not have been satisfied that the application met the core criteria;

the TCO that the Comptroller-General of Customs makes continues in force only until the production start-up day.

(2) If the Comptroller-General of Customs is satisfied, in relation to a TCO application:

(a) that the application does not meet the core criteria; and

(b) that on a day (the ***production close-down day***) occurring later than the day on which the application was lodged but before the making of the decision on the application, substitutable goods in relation to the goods the subject of the application ceased to be produced in Australia; and

(c) that if the production close-down day had occurred on the day on which the application was lodged the Comptroller-General of Customs would have been satisfied that the application met the core criteria;

the Comptroller-General of Customs must make a TCO in accordance with section 269P, but the TCO is in force only from the production close-down day.

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Division 4—Revocation of TCOs

269SB Request for revocation of TCOs

(1) If:

(a) a TCO is in force on a particular day; and

(b) a person claiming to be a producer in Australia of substitutable goods in relation to the goods covered by the order is of the view that if:

(i) the TCO were not in force on that particular day; and

(ii) that particular day were the day on which the TCO application was lodged;

the TCO would not have been made;

the person may request the Comptroller-General of Customs to revoke the order.

(2) A request must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such information as the form requires; and

(d) be signed in the manner indicated in the form.

(3) A request for revocation may be lodged:

(a) by leaving it at a place that has been allocated for the lodgement of TCO applications by notice published on the Department's website; or

(b) by posting it by prepaid post to a postal address specified in the approved form; or

(c) by sending it by fax to a fax number specified in the approved form;

and the request is taken to have been lodged when the request, or a fax of the request, is first received by an officer of Customs.

(4) The day on which the request is to be taken to be lodged, must be recorded on the request.

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269SC Processing requests for revocation of TCOs

(1) Not later than 60 days after lodgement of a request for revocation of a TCO, and after having regard to the request and to any other information, document or material given to the Comptroller-General of Customs under section 269SF, the Comptroller-General of Customs must decide whether or not he or she is satisfied:

(a) that, on the day of lodgement of the request, the person requesting the revocation of the TCO is a producer in Australia of goods that are substitutable goods in relation to the goods the subject of the order; and

(b) that, if the TCO were not in force on that day but that day were the day on which the application for that TCO was lodged, the Comptroller-General of Customs would not have made the TCO.

(1A) As soon as practicable after receiving a request for revocation of a TCO, the Comptroller-General of Customs must publish a *Gazette* notice stating:

(a) that the request has been lodged; and

(b) the date that the request was lodged; and

(c) the full particulars of the TCO to which the request relates.

(2) If the Comptroller-General of Customs fails to make a decision in respect of a request for the revocation of a TCO within 60 days after lodgement of the request, the Comptroller-General of Customs is taken, for the purposes of subsection (1), at the end of that period, to have decided that he or she is not satisfied of the matters referred to in that subsection in relation to the request.

(3) If the Comptroller-General of Customs is satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO, the Comptroller-General of Customs must make an order revoking the TCO.

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(4) If the Comptroller-General of Customs is satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO but is also satisfied that if:

(a) the TCO were not in force on the day of lodgement of the request; and

(b) that day were the day of lodgment of an application for another TCO (the ***narrower TCO***) in respect only of goods covered by the TCO that are not produced in Australia by the person making the request;

the Comptroller-General of Customs would have made such a narrower TCO, he or she must:

(c) revoke the TCO; and

(d) make, in its place, such a narrower TCO.

(5) If the Comptroller-General of Customs is not satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO, the Comptroller-General of Customs must refuse the request.

(6) An order under subsection (3) or (4) revoking a TCO comes into force on the day on which the request to revoke the TCO was lodged.

(7) If a narrower TCO is made in place of another TCO that is revoked in subsection (4), that narrower TCO comes into force, for the purposes of this Part, from the date of effect of the revocation of the other TCO, as if it had been made under section 269P or 269Q.

(8) Subsections 269SC(6) and (7) have effect despite section 12 of the *Legislation Act 2003.*

269SD Revocation at the initiative of Comptroller-General of Customs

(1AA) If:

(a) a TCO is in force on a particular day; and

(b) the Comptroller-General of Customs believes that if:

(i) the TCO were not in force on that day; and

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(ii) that day were the day on which the application for the TCO was lodged;

the Comptroller-General of Customs would not have made the TCO;

the Comptroller-General of Customs may, not later than 14 days after that day, publish a notice in the *Gazette*:

(c) declaring his or her intention, subject to subsection (1AB), to make an order revoking the TCO with effect from that particular day (the ***intended revocation day***); and

(d) inviting any person who might be affected by the revocation of that TCO to give a written submission to the Comptroller-General of Customs within 28 days of the notice concerning the proposed revocation.

(1AB) Within 60 days after the date of publication of the notice referred to in subsection (1AA), the Comptroller-General of Customs must, after consideration of the matters raised in any submissions made in response to the invitation and of any other relevant matters:

(a) decide whether or not he or she is satisfied of the matters referred to in paragraph (1AA)(b); and

(b) if the Comptroller-General of Customs is so satisfied—make an order revoking the TCO with effect from the intended revocation day.

(1) If the Comptroller-General of Customs is satisfied that a TCO is no longer required because the general tariff rate in respect of the goods the subject of the order has been reduced to "Free", the Comptroller-General of Customs may make an order revoking the TCO with effect from the day the tariff rate was so reduced.

(1A) If the Comptroller-General of Customs is satisfied on any day that a TCO is no longer required because, in the 2 years preceding that day, the TCO has not been quoted in an import entry to secure a concessional rate of duty, the Comptroller-General of Customs may make an order revoking the TCO with effect from that day.

(2) If the Comptroller-General of Customs is satisfied that:

(a) because of an amendment of a Customs tariff; or

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(b) having regard to a decision of a court or of the Administrative Review Tribunal; or

(c) having regard to written advice on the matter given by an officer of Customs;

the tariff classification that is stated in a TCO to apply to the goods the subject of the TCO has not, with effect from a particular day, applied to those goods, the Comptroller-General of Customs must:

(d) make an order revoking the TCO with effect from that day; and

(e) make a new TCO in respect of the goods with effect from the revocation.

(2A) If, because of an amendment of a Customs Tariff, the Comptroller-General of Customs is satisfied that the tariff classification that is stated in a TCO to apply to the goods the subject of the TCO will not apply to those goods from a particular day, the Comptroller-General of Customs may:

(a) make an order revoking the TCO with effect from that day; and

(b) make a new TCO in respect of the goods with effect from that day.

(3) If the Comptroller-General of Customs is satisfied that, in making a TCO, there has been a transcription error in the description of goods the subject of the TCO including the tariff classification that is stated in the TCO to apply to the goods, the Comptroller-General of Customs may:

(a) make an order revoking the TCO with effect from the day the TCO came into force; and

(b) make a new TCO in respect of goods that corrects the error with effect from the revocation.

(4) The particular day referred to in subsection (2) may be the day on which the TCO that is revoked came into force or a later day.

(5) If the Comptroller-General of Customs is satisfied that a TCO contains a description of the goods the subject of the order in terms

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of their intended end use, the Comptroller-General of Customs may make an order revoking the TCO with effect from the revocation.

(6) This section has effect despite section 12 of the *Legislation Act 2003*.

269SE Notification of revocation decisions

(1) As soon as practicable after the Comptroller-General of Customs makes a decision under subsection 269SC(1), the Comptroller-General of Customs must:

(a) by notice in writing, inform the applicant of the decision; and

(b) by notice published in the *Gazette*, inform all other interested persons of the decision.

(2) As soon as practicable after the Comptroller-General of Customs makes a decision to make an order under subsection 269SD(1AB), (1) or (1A), (2), (2A) or (5), the Comptroller-General of Customs must, by notice published in the *Gazette*, inform all interested persons of the decision.

(3) If the decision referred to in subsection (1) or (2) has led to the making of an order revoking a TCO or both to the making of an order revoking a TCO and the making of a new TCO, the notice of that decision given to the applicant and published in the *Gazette* must include full particulars of the order or orders.

(4) A failure to comply with subsection (1), (2) or (3) does not affect the validity of the decision concerned or of any order or orders to which it has led.

269SF Comptroller-General of Customs may seek information, documents or material relating to revocation

(1) If the Comptroller-General of Customs considers that, in relation to a request for revocation of a TCO, any person (including the person who made the request) may be able to supply information or produce a document or material relevant to the consideration of the request, the Comptroller-General of Customs may, by notice in

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writing, request the supply of the information or the production of the document or material within a period specified in the notice and ending not later than 60 days after receiving the request.

(2) Any information provided in satisfaction of a request under subsection (1) must be provided in writing.

(3) If a person refuses or fails to supply information or produce a document or material under subsection (1) within the period allowed but subsequently supplies the information or produces the document or material, the Comptroller-General of Customs must not take that information, document or material into account in determining whether to revoke a TCO.

269SG Effect of revocation on goods in transit and capital equipment on order

(1) Subject to subsection (2), if a TCO is revoked under subsection 269SC(3) or (4) or 269SD(1AB) or (1A), the TCO ceases to apply in relation to goods entered for home consumption on or after the day on which the revocation comes into effect.

(2) Despite the revocation of a TCO under subsection 269SC(3) or (4) or 269SD(1AB) or (1A) in respect of goods, the TCO continues to apply in relation to:

(a) goods that:

(i) were imported into Australia on or before the day on which the revocation came into effect; and

(ii) are entered for home consumption, before, on, or within 28 days after, that day; and

(b) goods that:

(i) were in transit to Australia on that day; and

(ii) are entered for home consumption before, on, or within 28 days after, the day on which they were imported into Australia.

(3) For the purposes of subparagraph (2)(b)(i), goods shall be taken to be in transit to Australia if, and only if, they have left for direct

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shipment to Australia from a place of manufacture, or a warehouse, in the country from which they are being exported.

(4) Where an officer of Customs is satisfied that, after a TCO in relation to made-to-order capital equipment comes into force but before its revocation under subsection 269SC(3) or (4) or 269SD(1AB) or (1A), a firm order had been placed for the purchase of any such equipment, the TCO continues to apply in relation to the importation into Australia of that capital equipment.

(5) In this section:

made-to-order capital equipment means a particular item of capital equipment:

(a) that is made on a one-off basis to meet a specific order rather than being the subject of regular or intermittent production; and

(b) that is not produced in quantities indicative of a production run.

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Division 5—Miscellaneous

269SH Internal review

(1) Not later than 28 days after gazettal of a decision (the ***original decision***) on a TCO application or on a request for revocation of a TCO, any affected person within the meaning of subsection (13) who objects to the making of the decision may apply to the Comptroller-General of Customs for its reconsideration.

(2) An application for reconsideration must:
  (a) be in writing; and
  (b) include the grounds on which the person objects to the decision (whether or not those grounds had previously been considered).

(3) An application for reconsideration:
  (a) must be lodged with the Comptroller-General of Customs in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and
  (b) must have the day of its lodgement recorded.

(3A) As soon as practicable after receiving a request for reconsideration of a decision that leads to the making of a TCO or that refuses to revoke a TCO, the Comptroller-General of Customs must publish a *Gazette* notice stating:
  (a) that the request has been lodged; and
  (b) the date that the request was lodged; and
  (c) the full particulars of the TCO to which the request relates.

(4) Where application is made for reconsideration of a decision made on a TCO application, the Comptroller-General of Customs, having regard to:
  (a) the TCO application; and
  (b) the submissions, information, documents and materials which the Comptroller-General of Customs was entitled to take into account in considering the TCO application; and

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(c) any new matter produced to the Comptroller-General of Customs by the applicant for reconsideration which, under subsection (7), the Comptroller-General of Customs is not prevented from taking into account for that purpose;

must decide, not later than 90 days after the last day for lodgement of the application for reconsideration, whether to affirm the original decision or to substitute any other decision that the Comptroller-General of Customs might have made.

(5) Where application is made for reconsideration of a decision on a request for revocation, the Comptroller-General of Customs, having regard to:

(a) the request for revocation; and

(b) the information, documents and materials which the Comptroller-General of Customs was entitled to take into account in considering the request; and

(c) any new matter produced to the Comptroller-General of Customs by the applicant for reconsideration which, under subsection (7), the Comptroller-General of Customs is not prevented from taking into account for that purpose;

must decide, not later than 60 days after the last day for lodgement of the application for reconsideration, whether to affirm the original decision or to substitute any other decision that the Comptroller-General of Customs might have made.

(6) If the Comptroller-General of Customs fails to make a decision under subsection (4) or (5) within the period referred to in that subsection, the Comptroller-General of Customs is taken, for the purposes of the reconsideration, at the end of that period, to have made a decision to affirm the original decision.

(7) For the purposes of subsections (4) and (5), the Comptroller-General of Customs must not take into account any new material that is not produced to him or her by the applicant for reconsideration of an original decision within the period of 28 days after notification of the original decision in the *Gazette*.

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(8) Where the Comptroller-General of Customs, on reconsidering an original decision, decides to substitute for that decision any decision that he or she might have made, the substituted decision is to be taken to have been made when the original decision was made.

(9) If the substituted decision involves the making of a TCO, or of an order revoking a TCO, that TCO or revocation order comes into force on the day on which, if the original decision had involved making the TCO or order revoking a TCO, that TCO or order would have come into force.

(10) As soon as practicable after the Comptroller-General of Customs makes a decision under subsection (4) or (5) on an application for reconsideration, the Comptroller-General of Customs must:

(a) by notice in writing inform the applicant for reconsideration of the decision made on the reconsideration; and

(b) by notice published in the *Gazette*, inform all other interested persons of the decision made on that reconsideration.

(11) If the decision on an application for reconsideration has led to the making of an order or orders, the notice of the decision given to the applicant for reconsideration and published in the *Gazette* must include full particulars of the order or orders.

(12) A failure to comply with subsection (10) does not affect the validity of any decision on a reconsideration or of any order or orders to which it has led.

(13) In subsection (1):

affected person means:

(a) in relation to a decision on a TCO application:

(i) the applicant for the TCO; or

(ii) any person who lodged a submission before the last day for submissions in relation to the TCO application; or

(iii) any person who, in the opinion of the Comptroller-General of Customs, was not reasonably

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able to lodge a submission in relation to the TCO application within 50 days of the gazettal day; and

(b) in relation to a decision on a request for revocation:

(i) the person requesting the revocation; or

(ii) any other person whose interests are affected by the decision made on the request.

269SHA Administrative Review Tribunal Review of reconsideration decisions

(1) For the purpose of an application to the Administrative Review Tribunal under section 273GA for review of a decision under subsection 269SH(4) or (5) (a ***reconsideration decision***), application may be made by any person who is an affected person in relation to that decision within the meaning of subsection 269SH(13).

(2) If an affected person applies to the Tribunal for review of a reconsideration decision, the Comptroller-General of Customs must, as soon as practicable after being notified of the application or of the first such application, publish in the *Gazette*:

(a) particulars of the decision (including any relevant TCO number or TCO application number) in respect of which such an application for review has been made; and

(b) the name of the person who made such an application; and

(c) sufficient particulars to identify the review proceedings before the Tribunal.

(3) Any person who had not applied under section 273GA for review of a reconsideration decision but whose interests are affected by the decision (whether or not that person is an affected person within the meaning of subsection 269SH(13)) may apply under the *Administrative Review Tribunal Act 2024* to be made a party to the proceedings within 60 days of the publication under subsection (2) or within such further period as the Tribunal allows.

(4) The Tribunal must not grant a person applying to be joined as a party to proceedings for review of a reconsideration decision an

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extension of the period of 60 days referred to in subsection (3) unless it is satisfied that the person was not reasonably able to apply within the period.

(5) Any document on which a party to proceedings for review of a reconsideration decision before the Administrative Review Tribunal intends to rely must, subject to the provisions of the *Administrative Review Tribunal Act 2024*:

(a) be filed with the Tribunal; and

(b) be served on the other parties to the proceeding;

not less than 28 days before the date set for hearing, unless the Tribunal makes an order permitting the document to be filed and served within a lesser period or to be introduced at the hearing without being so filed or served.

(6) In deciding whether to make such an order, the Tribunal must have regard to whether there is any reasonable cause for the document not being made available at least 28 days before the date of the hearing.

269SJ TCOs not to apply to goods described by reference to their end use or certain goods

(1) The Comptroller-General of Customs must not make a TCO in respect of goods:

(aa) described in terms other than generic terms; or

(a) described in terms of their intended end use; or

(b) declared by the regulations to be goods to which a TCO should not extend.

(1A) Without limiting the meaning of the reference in paragraph (1)(aa) to goods described in generic terms, goods are taken not to be so described if their description, either directly or by implication, indicates that they are goods of a particular brand or model, or that a particular part number applies to the goods.

(2) If a regulation is made for the purposes of paragraph (1)(b) in respect of goods to which a TCO applies, that TCO must be taken,

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to the extent that it covers those goods, to have been revoked by the Comptroller-General of Customs on the day those regulations came into effect.

(3) Where a TCO is taken to have been revoked under subsection (2) to the extent that it covers goods the subject of a regulation made for the purposes of paragraph (1)(b), the Comptroller-General of Customs must, as soon as practicable after the making of the regulation, by notice published in the *Gazette*, inform interested persons:

(a) of the fact that the regulation has been made; and

(b) of its effect on the TCO; and

(c) of the day on which the TCO is taken to have been so revoked.

269SK TCOs not to contravene international agreements

If the Comptroller-General of Customs is satisfied that, in accordance with the obligations of Australia under an agreement (including a treaty or convention) between Australia and another country or other countries, the rate of duty attaching to the importation of goods (whether or not the produce of a particular country) is not to be less than a particular minimum rate, the Comptroller-General of Customs must not make a TCO that would result in a contravention of those obligations.

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