

CUSTOMS AMENDMENT ACT 1977

No. 154 of 1977

An Act to amend the *Customs Act* 1901.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

- | | |
|---|--|
| Short title
&c. | <p>1. (1) This Act may be cited as the <i>Customs Amendment Act</i> 1977.¹</p> <p>(2) The <i>Customs Act</i> 1901¹ is in this Act referred to as the Principal Act.</p> |
| Commence-
ment | <p>2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.¹</p> <p>(2) Sections 3, 4, 7 and 9 shall come into operation on such date as is, or on such respective dates as are, fixed by Proclamation.</p> |
| Interpret-
ation | <p>3. Section 4 of the Principal Act is amended by omitting from sub-section (1) the definition of "Genuine invoice".</p> <p>4. Section 40B of the Principal Act is repealed and the following section substituted:</p> |
| Production
of
commercial
documents
and other
information | <p>"40B. (1) A Collector shall not pass an entry for home consumption or for warehousing in respect of goods—</p> <p>(a) unless he has verified the particulars of the goods shown in the entry by reference to information contained in commercial documents relating to the goods that have been furnished to a Collector by the owner of the goods upon, or at any time after, the delivery of the entry to the Collector or by reference to other information, in writing, in respect of the goods that has been so furnished to a Collector; or</p> <p>(b) if he has been unable so to verify any of those particulars, or has so verified some, but not all, of those particulars, unless—</p> <p>(i) he is satisfied that the owner is unable to furnish, or that it would be unreasonable or unnecessary in the circumstances to require the owner to furnish, all the documents and other information that would be necessary to enable him to comply with paragraph (a) in respect of those particulars or of the particulars that he has been unable so to verify; and</p> <p>(ii) in the case of goods on which duty is imposed according to value—he is also satisfied as to the value for duty of the goods.</p> |

“(2) At any time after an entry for home consumption or for warehousing in respect of goods has been delivered to a Collector, a Collector may, by notice in writing, require the owner of the goods at the time the entry was so delivered to deliver to him the commercial documents in respect of the goods that are in his possession or under his control (including any such documents that had previously been delivered to a Collector in relation to the goods and had been returned to the owner), or to deliver to the Collector, in writing, such information relating to the particulars of the goods shown in the entry, being information of a kind specified in the notice, as is within the knowledge of the owner or as the owner is reasonably able to obtain.

“(3) Where the owner of goods has been required to furnish documents or information under sub-section (2), a Collector shall not pass an entry for home consumption or warehousing in respect of the goods unless the requirement has been complied with or revoked.

“(4) Where the owner of goods furnishes a commercial document to a Collector under this section, the Collector shall deal with the document in accordance with the regulations and then return the document to the owner.

“(5) In this section, ‘commercial document’, in relation to goods, means a document prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage of the goods, and includes an invoice or a bill of lading in respect of the goods or a receipt given on the sale of the goods.”

5. (1) Section 50 of the Principal Act is amended by omitting sub-sections (3) and (4) and substituting the following sub-sections:

Prohibition
of the
importation
of goods

“(3) Without limiting the generality of paragraph (c) of sub-section (2), the regulations—

- (a) may provide that the importation of the goods is prohibited unless a licence, permission, consent or approval to import the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations; and
- (b) may make provision for and in relation to—
 - (i) the assignment of licences or permissions so granted or of licences or permissions included in a prescribed class of licences or permissions so granted;
 - (ii) the granting of a licence or permission to import goods subject to compliance with conditions or requirements, either before or after the importation of the goods, by the holder of the licence or permission at the time the goods are imported;

- (iii) the surrender of a licence or permission to import goods and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to import goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to import goods; and
- (iv) the revocation of a licence or permission that is granted subject to a condition or requirement to be complied with by a person for a failure by the person to comply with the condition or requirement, whether or not the person is charged with an offence against sub-section (4) in respect of the failure.

“(4) Where a licence or permission granted, after the commencement of this sub-section, under the regulations is subject to a condition or requirement to be complied with by a person, the person shall comply with the condition or requirement and, if he fails to do so, he is guilty of an offence punishable upon conviction—

- (a) if the licence or permission relates to goods that are not narcotic goods—by a fine not exceeding \$1,000; or
- (b) if the licence or permission relates to goods that are narcotic goods—as provided by section 235.”

(2) Notwithstanding the repeal effected by sub-section (1), regulations that were in force for the purposes of section 50 of the Principal Act immediately before the commencement of this section continue in force and shall be deemed to be as valid and effectual as they would be if made for the purposes of section 50 of the Principal Act as amended by this section, but may be repealed or amended by regulations made under the Principal Act as amended by this Act.

Prohibited
exports

6. Section 112 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “the last preceding sub-section” and substituting “sub-section (1)”;
- (b) by omitting from paragraph (c) of sub-section (2) “prescribed” and substituting “specified”; and
- (c) by inserting after sub-section (2) the following sub-sections:

“(2A) Without limiting the generality of paragraph (c) of sub-section (2), the regulations—

- (a) may provide that the exportation of the goods is prohibited unless a licence, permission, consent or approval to export the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations; and

- (b) may make provision for and in relation to—
- (i) the assignment of licences or permissions so granted or of licences or permissions included in a prescribed class of licences or permissions so granted;
 - (ii) the granting of a licence or permission to export goods subject to compliance with conditions or requirements, either before or after the exportation of the goods, by the holder of the licence or permission at the time the goods are exported;
 - (iii) the surrender of a licence or permission to export goods and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to export goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to export goods; and
 - (iv) the revocation of a licence or permission that is granted subject to a condition or requirement to be complied with by a person for failure by the person to comply with the condition or requirement, whether or not the person is charged with an offence against sub-section (2B) in respect of the failure.

“(2B) Where a licence or permission granted, after the commencement of this sub-section, under the regulations is subject to a condition or requirement to be complied with by a person, the person shall comply with the condition or requirement and, if he fails to do so, he is guilty of an offence punishable upon conviction—

- (a) if the licence or permission relates to goods that are not narcotic goods—by a fine not exceeding \$1,000; or
- (b) if the licence or permission relates to goods that are narcotic goods—as provided by section 235.”

7. (1) Sections 114 and 114A of the Principal Act are repealed and the following sections substituted:

“114. (1) Subject to this Act, the owner of goods intended for export shall enter the goods for export before the goods are taken on board the ship or aircraft in which they are to be exported. Entry of goods for export

“(2) Where a ship or aircraft is to be exported otherwise than in another ship or aircraft, it shall be entered for export before it leaves the place of exportation.

“(3) Sub-section (1) does not apply in relation to—

- (a) goods that are excisable goods within the meaning of the *Excise Act 1901*;
- (b) goods which, under the regulations, are exempt from this section; or
- (c) goods to which section 114A applies.

“(4) The regulations may require a person who exports, or proposes to export, goods referred to in paragraph (3) (b) to furnish in writing to a Collector, in accordance with the regulations, such information in respect of the goods as is prescribed.

Returns
relating to
goods
exported

“114A. (1) The Minister may, by notice published in the *Gazette*, declare that goods, or goods included in a specified class of goods, owned by a specified person that are intended for export from any place or from a specified place to any place or to a specified place are goods to which this section applies.

“(2) A notice under sub-section (1) does not extend to warehoused goods owned by the person to whom the notice relates unless it is expressed so to extend.

“(3) A person, being the owner of goods to which this section applies, shall, within 7 days after the expiration of a period approved by the Collector in writing in respect of the person for the purposes of this section, furnish to a Collector a return, in accordance with a form approved by a Collector, signed by, or on behalf of, the person and containing such information as is prescribed in respect of goods to which this section applies that were exported by the person during the period.

Penalty: \$200.

Authority for
exportation
of goods to
be given

“115. The owner of a ship or aircraft shall not permit goods required to be entered for export to be taken on board the ship or aircraft for the purpose of exportation unless the goods have been so entered and the entry has been passed.

Penalty: \$500.”.

(2) The amendment made by sub-section (1) does not apply in relation to goods that, before the commencement of this section, were taken on board the ship or aircraft in which they are to be exported.

(3) Notwithstanding the repeal effected by sub-section (1), regulations that were in force for the purposes of section 114 of the Principal Act immediately before the commencement of this section continue in force and shall be deemed to be as valid and effectual as they would be if made for the purposes of section 114 of the Principal Act as amended by this section, but may be repealed or amended by regulations made under the Principal Act as amended by this Act.

8. After section 229 of the Principal Act the following section is inserted:

“229A. (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.

Proceeds of
drug
trafficking
liable to
forfeiture

“(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 possession or under his control by reason of—
- (i) his selling or otherwise dealing in, or his agreeing to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act;
 - (ii) his importing, or his agreeing to import, narcotic goods into Australia in contravention of this Act;
 - (iii) his keeping, his having kept, or his agreeing to keep in his possession narcotic goods imported into Australia in contravention of this Act; or
 - (iv) his aiding, abetting, 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 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 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 with or out of moneys to which this section applied.

“(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 sub-section (2), be deemed to be moneys that came into his possession or under his control, or were paid to him, in the circumstances in which he 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 for the goods by means of a cheque that came into his possession or under

his control as set out in paragraph (2) (a), the goods shall, for the purposes of sub-section (2), be deemed to have come into his possession or under his control in the circumstances in which the cheque came into his possession or under his 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 in pursuance of section 203, they shall, for the purposes of sections 204 and 209 (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 section 203, 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 sub-section (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 section 203, 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 became the owner of the moneys or goods, did not know, and 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 sub-section (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 section 203, 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 storing in the warehouse narcotic goods imported into Australia in contravention of this Act or by reason of his selling goods that were acquired by him with or out of any such moneys; or
- (ii) the goods were purchased or otherwise acquired by him out of moneys that so came into his possession or under his 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.”

9. Section 234 of the Principal Act is amended by omitting paragraph (c). Customs offences

10. Section 235 of the Principal Act is repealed and the following section substituted:

“235. (1) Where—

- (a) a person commits an offence against sub-section (4) of section 50 or sub-section (2B) of section 112; and
- (b) the offence is an offence that is punishable as provided by this section,

Penalties for offences in relation to narcotic goods

the penalty applicable to the offence is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 2 years, or both.

“(2) Subject to sub-sections (3) and (7), where—

- (a) a person commits an offence against sub-section (1) of section 231, section 233A or sub-section (1) of section 233B; and
- (b) the offence is an offence that is punishable as provided by this section,

the penalty applicable to the offence is—

- (c) where the Court is satisfied that the narcotic goods in relation to which the offence was committed consist of a quantity of a narcotic substance (being the narcotic substance specified in the relevant information, complaint, declaration, claim or indictment as the narcotic substance of which the goods consist) that is not less than the trafficable quantity applicable to the substance—

- (i) if the narcotic substance is a narcotic substance other than cannabis—a fine not exceeding \$100,000 or imprisonment for a period not exceeding 25 years, or both; or
- (ii) if the narcotic substance is cannabis—a fine not exceeding \$4,000 or imprisonment for a period not exceeding 10 years, or both; or

(d) in any other case—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 2 years, or both.

“(3) Paragraph (c) of sub-section (2) does not apply in the case of an offence where the Court is satisfied that the offence was not committed by the person charged for any purpose related to the sale of, or other commercial dealing in, the narcotic goods in relation to which the offence was committed.

“(4) An offence referred to in sub-section (1) or (2) may be prosecuted summarily or upon indictment or, where the law of the State or Territory in which the proceedings are brought makes provision for an offender who pleads guilty to a charge to be dealt with by the Court otherwise than on indictment, the Court may deal with an offender in accordance with that law.

“(5) Nothing in sub-section (4) renders an offender liable to be punished more than once for the same offence.

“(6) Where proceedings for an offence referred to in sub-section (1) or (2) are brought in a court of summary jurisdiction, the court may commit the defendant for trial or to be otherwise dealt with in accordance with law or, if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent to it doing so, may determine the proceedings summarily.

“(7) Where a court of summary jurisdiction determines proceedings summarily in accordance with sub-section (6), it shall not impose a fine exceeding \$2,000 or sentence the defendant to imprisonment for a period exceeding 2 years, but may impose both a fine and a period of imprisonment in respect of the offence.”.

Schedule VI **11.** Schedule VI to the Principal Act is repealed and the Schedule set out in Schedule 1 to this Act is substituted.

Formal amendments **12.** The Principal Act is amended as set out in Schedule 2 to this Act.

Application **13.** Notwithstanding the amendments made by this Act—
 (a) the Principal Act as in force immediately before the date of commencement of this section continues to apply in relation to offences committed before that date; and
 (b) section 229A of the Principal Act as amended by this Act does not apply in relation to moneys or goods that came into the possession or under the control of a person before that date in circumstances set out in sub-section 229A (2) of the Principal Act as amended by this Act.

SCHEDULE 1

Section 11

SCHEDULE VI

Section 4

Column 1 Name of substance	Column 2 Trafficable quantity
	Grams
Acetorphine	2.0
Acetylcodeine	2.0
Acetyldihydrocodeine	2.0
Acetylmethadol	2.0
Allylprodine	2.0
Alphacetylmethadol	10.0
Alphameprodine	0.2
Alphamethadol	0.2
Alphaprodine	25.0
Ampheloral	2.0
3-(2-Aminopropyl) indole	2.0
Amphetamine	2.0
Anileridine	25.0
Barbiturates	50.0
Benzethidine	10.0
Benzylmorphine	5.0
Betacetylmethadol	5.0
Betameprodine	5.0
Betamethadol	5.0
Betaprodine	5.0
Beztramide	5.0
4-Bromo-2,5-dimethoxyamphetamine	0.5
Bufotenie	2.0
Cannabinoids	2.0
Cannabis	100.0
Cannabis resin	20.0
Chlorphentermine	2.0
Clonitazene	5.0
Cocaine	2.0
Codeine	10.0
Codeine-N-oxide	10.0
Codoxime	10.0
Desomorphine	2.0
Diampromide	5.0
Diethylpropion	5.0
Diethylthiambutene	5.0
N,N-Diethyltryptamine	2.0
Dihydrocodeine	10.0
Dihydromorphine	10.0
Dimenoxadol	10.0
Dimepheptanol	10.0
2,5-Dimethoxy-4-methylamphetamine	2.0
Dimethylthiambutene	20.0
N,N-Dimethyltryptamine	2.0
Dioxaphetyl butyrate	2.0
Diphenoxylate	2.0
Dipipanone	10.0
Ecgonine	10.0
Ethylmethylthiambutene	10.0
Ethylmorphine	2.0
Etonitazene	5.0
Etorphine	5.0
Etoperidine	5.0
Fentanyl	0.005
Furethidine	1.0

SCHEDULE 1—continued

Column 1 Name of substance	Column 2 Trafficable quantity
	Grams
Harmaline	2.0
Harmine	2.0
Heroin	2.0
Hydrocodone	2.0
Hydromorphenol	2.0
Hydromorphone	2.0
Hydroxyamphetamine	2.0
Hydroxypethidine	5.0
Ketobemidone	2.0
Levorphanol	1.0
Lysergamide	0.1
Lysergic acid	0.002
Lysergide	0.002
Mescaline	7.5
Metazocine	7.0
Methadone	2.0
Methaqualone	50.0
Methorphan	2.0
Methylamphetamine	2.0
3,4-Methylenedioxyamphetamine	0.5
Methyl-desorphine	2.0
Methyldihydromorphine	2.0
Methylphenidate	2.0
Metopon	2.0
Monoacetylmorphines	2.0
Moramide	2.0
Morpheridine	2.0
Morphine	2.0
Morphine-N-oxide	2.0
Myrophine	20.0
Nicocodine	2.0
Nicodicodine	2.0
Nicomorphine	2.0
Noracymethadol	2.0
Norcodeine	2.0
Norlevorphanol	2.0
Normethadone	5.0
Normorphine	20.0
Norpipanone	10.0
Opium	20.0
Oxycodone	5.0
Oxymorphone	2.0
Pentazocine	20.0
Pethidine	10.0
Phenadoxone	10.0
Phenampramide	10.0
Phenazocine	1.0
Phendimetrazine	5.0
Phenmetrazine	5.0
Phenomorphin	5.0
Phenoperidine	1.0
Pholcodine	5.0
Piminodine	10.0
Pipradrol	1.0
Piritramide	1.0
Proheptazine	1.0
Properidine	25.0
Psilocin	0.1
Psilocybin	0.1
Tetrahydrocannabinols	2.0

SCHEDULE 1—continued

Column 1 Name of substance	Column 2 Trafficable quantity
	Grams
Thebacon	2.0
Thebaine	2.0
Trimeperidine	10.0

SCHEDULE 2

Section 12

FORMAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting “Australia” (wherever occurring) and substituting “the Commonwealth”:

Sections 4 (1) (definition of “Customs Act”), 7, 13 (2) (a), 35A (1), (1A), (1B) and (2), 59, 119 (3) and (4).

2. Schedules I, III, IV and V to the Principal Act are amended by omitting “AUSTRALIA” from the headings in those Schedules and substituting “THE COMMONWEALTH OF AUSTRALIA”.

NOTES

- Act No. 154, 1977; assented to 10 November 1977.
- Act No. 6, 1901, as amended. For previous amendments *see* Act No. 21, 1906; Nos. 9 and 36, 1910; No. 19, 1914; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 113, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; and Nos. 41, 91 and 174, 1976.