

# **Immigration (Unauthorized Arrivals) Act 1980**

**No. 112 of 1980**

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# Immigration (Unauthorized Arrivals) Act 1980

No. 112 of 1980

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## An Act relating to the bringing of certain vessels to Australia

[Assented to 8 September 1980]

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

### Short title

1. This Act may be cited as the *Immigration (Unauthorized Arrivals) Act* 1980.

### Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.

### Interpretation

3. (1) In this Act, unless the contrary intention appears—

“appointed airport” means an airport appointed under section 15 of the *Customs Act* 1901;

“Australian waters” means the territorial sea of Australia and the waters on the landward side of the territorial sea of Australia, whether or not waters of the sea and whether or not waters within the limits of a State or of an internal Territory;

“authorized officer”, in relation to the exercise of any power or the performance of any duty or function under this Act, means an officer authorized by the Minister to exercise that power or perform that duty or function;

“master”, in relation to a vessel, includes a person having command or charge of the vessel;

“officer” means a person who is—

- (a) an officer of the Department of Immigration and Ethnic Affairs;
- (b) an officer for the purposes of the *Customs Act* 1901;

- (c) a member of the Australian Federal Police;
- (d) a member of the Police Force of a State or Territory; or
- (e) a member of the Defence Force;

“relevant person” means any person other than a person who—

- (a) is an Australian citizen;
- (b) is the holder of a visa or return endorsement in force under the *Migration Act 1958*; or
- (c) is exempted, under paragraph 11C (1) (b) of that Act, from the requirements of Division 1A of Part II of that Act;

“ship” means a vessel used in navigation other than air navigation and includes a barge, lighter or like vessel;

“vessel” means an aircraft or ship;

“voyage” includes a flight.

(2) Where an aircraft lands in Australia upon the termination of a flight, or while engaged in a flight, that commenced outside Australia, each of the persons on board the aircraft (including the master and members of the crew of the aircraft) shall, for the purposes of this Act, be taken to have been brought to Australia on the aircraft.

(3) Sub-section (2) applies to a person who is on board an aircraft when it lands in Australia whether or not he disembarks from the aircraft in Australia.

(4) Where a ship enters Australian waters while engaged in a voyage that commenced outside Australia, each of the persons on board the ship (including the master and members of the crew of the ship) shall, for the purposes of this Act, be taken to have been brought to Australia on the ship.

(5) Sub-section (4) applies to a person who is on board a ship when it enters Australian waters whether or not he disembarks from the ship in Australia.

(6) Without limiting the meaning of the expression “member of the crew of a ship” in this Act, a person who has travelled to Australia on a ship shall be deemed to have been a member of the crew of the ship on the voyage of the ship to Australia if, during the voyage, he ordinarily performed duties of a kind ordinarily performed by the crew of a ship, whether or not he was formally engaged to serve on the ship.

(7) In this Act, a reference to a voyage from one place to another place shall be read as including a reference to a voyage starting and finishing at the same place.

#### **Aircraft or ships to which this Act applies**

**4. (1) Where—**

- (a) relevant persons are brought to Australia on an aircraft by reason that the aircraft lands in Australia on a flight that commenced outside Australia; and

- (b) the number of relevant persons who are so brought to Australia on the aircraft exceeds the prescribed number of persons in respect of the aircraft,

the aircraft becomes, upon landing in Australia upon the termination of, or while engaged in, that flight, an aircraft to which this Act applies.

(2) Where—

- (a) relevant persons are brought to Australia on a ship by reason that the ship enters Australian waters while engaged in a voyage that commenced outside Australia; and
- (b) the number of relevant persons who are so brought to Australia on the ship exceeds the prescribed number of persons in respect of the ship,

the ship becomes, upon entering Australian waters while engaged in that voyage, a ship to which this Act applies.

(3) An aircraft that becomes an aircraft to which this Act applies by virtue of sub-section (1) continues to be such an aircraft until it departs from Australia.

(4) A ship that becomes a ship to which this Act applies by virtue of sub-section (2) continues to be such a ship until it departs from Australian waters.

**Calculation of prescribed number of persons**

5. (1) The regulations may specify a number of persons to be, for the purposes of this Act, the prescribed number of persons in respect of every vessel, or in respect of every vessel included in a specified class of vessels.

(2) For the purposes of this Act, the prescribed number of persons, in respect of a vessel, is 5 persons or, if regulations referred to in sub-section (1) are in force, the number of persons that is, under those regulations, the prescribed number of persons in respect of the vessel.

(3) In proceedings for an offence against sub-section 6 (1), (2), (3) or (4), 7 (1), 8 (5) or (7), 11 (6), 18 (4) or 19 (4) in relation to a vessel in or on which persons have been brought to Australia, where the Court is satisfied, in respect of such a person—

- (a) that, when the person boarded the vessel, or last boarded the vessel, before being so brought to Australia, the person was in possession of a visa or return endorsement applicable to his travel to Australia; or
- (b) that the master of the vessel had reasonable grounds for believing that, when the person boarded the vessel, or last boarded the vessel, before being so brought to Australia, the person was a person exempted, under paragraph 11C (1) (b) of the *Migration Act* 1958, from the requirements of Division 1A of Part II of that Act,

the person shall be disregarded for the purpose of calculating the number of relevant persons who were brought to Australia on the vessel.

**Vessels bringing certain persons to Australia**

**6. (1) Where—**

- (a) relevant persons are brought to Australia on an aircraft or a ship; and
- (b) the number of relevant persons who are so brought to Australia exceeds the prescribed number of persons in respect of the aircraft or ship,

the master and members of the crew of the aircraft or ship are each guilty of an offence against this sub-section punishable, upon conviction, by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 10 years, or both.

(2) Where the owner, agent or charterer of an aircraft or ship is, by act or omission, in any way, directly or indirectly, knowingly concerned in, or party to, the bringing to Australia on the aircraft or ship of relevant persons to a number exceeding the prescribed number of persons in respect of that aircraft or ship, he is guilty of an offence against this sub-section punishable, upon conviction, by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 10 years, or both.

**(3) Where—**

- (a) relevant persons are brought to Australia on an aircraft or ship that is under the control of a person who has, or persons who have, unlawfully, by force or threat of force or by any form of intimidation, seized or taken control thereof in the course of its voyage; and
- (b) the number of relevant persons who are so brought to Australia exceeds the prescribed number of persons in respect of the aircraft or ship,

the person or each of the persons who so seized or took control of the aircraft or ship is guilty of an offence against this sub-section punishable, upon conviction, by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 10 years, or both.

**(4) Where—**

- (a) a person unlawfully, by force or threat of force, or by any form of intimidation, seizes or takes control of a ship to which this Act applies while the ship is travelling through Australian waters; or
- (b) persons unlawfully, by force or threat of force, or by any form of intimidation, seize or take control of a ship to which this Act applies while the ship is travelling through Australian waters,

with intent to convey to Australia the relevant persons, or any of the relevant persons, who are on board the ship, the person, or each of the persons, who so seizes or takes control of the ship is guilty of an offence against this sub-section punishable, upon conviction, by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 10 years, or both.

(5) It is a defence to a prosecution of a person for an offence against sub-section (1) in relation to an aircraft or ship on which relevant persons were brought to Australia if the person charged establishes to the satisfaction of the

Court that, when the aircraft landed in Australia, or the ship entered Australian waters, as the case may be, the aircraft or ship was under the control of a person or persons who, unlawfully, by force or threat of force, or by any form of intimidation, had seized or taken control of the aircraft or ship.

(6) Sub-section (5) does not apply if the person charged is the person, or one of the persons, who had so seized or taken control of the aircraft or ship.

(7) It is a defence to a prosecution of a person for an offence against sub-section (1) or (3) in relation to an aircraft on which relevant persons are brought to Australia if the person establishes to the satisfaction of the Court that the relevant persons were brought to Australia in the aircraft by reason only that the aircraft landed in Australia in consequence of an unforeseen emergency which rendered it necessary for the aircraft to do so in order to secure the safety of the aircraft, of its cargo or of human life.

(8) It is a defence to a prosecution of a person for an offence against sub-section (1) or (3) in relation to a ship on which relevant persons are brought to Australia if the person establishes to the satisfaction of the Court that the relevant persons were brought to Australia on the ship by reason only that, in the course of a voyage from a place in a country other than Australia to another place in a country other than Australia—

- (a) the ship entered the territorial sea of Australia in the exercise of the right of innocent passage; or
- (b) the ship entered Australian waters in consequence of an unforeseen emergency which rendered it necessary for the ship to be brought into Australian waters in order to secure the safety of the ship, of its cargo or of human life.

#### **Persons not to disable certain vessels**

7. (1) A person who, without lawful excuse, wilfully disables an aircraft or ship to which this Act applies commits an offence against this sub-section punishable, upon conviction, by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 10 years, or both.

(2) Without limiting the meaning of lawful excuse in sub-section (1), in any proceedings against a person for an offence against that sub-section with respect to the disabling of an aircraft or ship, it is a lawful excuse if the person establishes, to the satisfaction of the Court, that it was reasonable, in all the circumstances, for the action that resulted in the disabling of the aircraft or ship to have been taken in order to secure the safety of the aircraft or ship or of human life.

(3) For the purposes of this section—

- (a) a person shall be taken to disable an aircraft if the person destroys the aircraft or so damages the aircraft as to cause the aircraft to cease to be airworthy or, in the case of inflicting damage to an aircraft that is not airworthy, as would cause it to cease to be airworthy if it were airworthy; and

- (b) a person shall be taken to disable a ship if the person beaches, scuttles or destroys the ship or so damages the ship as to cause the ship to cease to be seaworthy or, in the case of inflicting damage on a ship that is not seaworthy, as would cause it to cease to be seaworthy if it were seaworthy.

**Restrictions on disembarking from certain vessels**

8. (1) Subject to sub-section (2), this section applies to every person who is brought to Australia on an aircraft to which this Act applies or on a ship to which this Act applies.

(2) This section does not apply to a person—

- (a) who is an Australian citizen;
- (b) who is a holder of an entry permit in force under the *Migration Act* 1958;
- (c) who is, by reason of section 8 of the *Migration Act* 1958, a person in relation to whose entry into Australia Division 1 of Part II of that Act does not apply; or
- (d) who is brought to Australia on a vessel to which section 9 of this Act applies and is the holder of a permit granted under that section.

(3) It is the duty of the master of an aircraft to which this Act applies which lands in Australia at a place other than an appointed airport to prevent the persons on board the aircraft who are persons to whom this section applies from disembarking from the aircraft at that place.

(4) It is the duty of the master of a ship to which this Act applies to prevent the persons on board the ship who are persons to whom this section applies from disembarking from the ship in Australia.

(5) Where—

- (a) the master or a member of the crew of an aircraft to which this Act applies which lands in Australia at a place other than an appointed airport, by act or omission, directly or indirectly permits any person to whom this section applies to disembark from the aircraft at that place; or
- (b) the master or a member of the crew of a ship to which this Act applies, by act or omission, directly or indirectly permits any person to whom this section applies to disembark from the ship,

he is guilty of an offence against this sub-section punishable, upon conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

(6) The master or a member of an aircraft or ship to which this Act applies is guilty of a separate offence against sub-section (5) in respect of each person to whom this section applies whose disembarkation has been permitted by him as set out in that sub-section.

(7) Where—

- (a) a person to whom this section applies—
  - (i) disembarks from an aircraft to which this Act applies at a place in Australia other than an appointed airport;
  - (ii) leaves the appointed airport at which he disembarked from an aircraft to which this Act applies; or
  - (iii) disembarks in Australia from a ship to which this Act applies;
- and
- (b) the person is aided or abetted by the master or a member of the crew of the aircraft or ship in disembarking from the aircraft or ship, or in leaving the appointed airport, as the case may be,

the master, or that member of the crew, as the case may be, is guilty of an offence against this sub-section, punishable, upon conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

(8) The master or a member of the crew of an aircraft or ship to which this Act applies is guilty of a separate offence against sub-section (7) in respect of each person to whom this section applies whom he aids or abets as set out in that sub-section.

(9) Where an aircraft to which this Act applies which arrives in Australia under the control of a person who has, or persons who have, unlawfully, by force or threat of force or by any form of intimidation, seized or taken control of the aircraft, this section applies to and in relation to the aircraft as if—

- (a) the reference in sub-section (3) to the master of an aircraft to which this Act applies were read as a reference to the person or persons who so seized or took control of the aircraft; or
- (b) the references in sub-sections (5), (6), (7) and (8) to the master or a member of the crew of an aircraft to which this Act applies were read as references to the person, or any of the persons, who so seized or took control of the aircraft.

(10) Where a ship to which this Act applies which arrives in Australia under the control of a person who has, or persons who have, unlawfully, by force or threat of force or by any form of intimidation, seized or taken control of the ship, this section applies to and in relation to the ship as if—

- (a) the reference in sub-section (4) to the master of a ship to which this Act applies were read as a reference to the person or persons who so seized or took control of the ship; and
- (b) the references in sub-sections (5), (6), (7) and (8) to the master or a member of the crew of a ship to which this Act applies were read as references to the person, or any of the persons, who so seized or took control of the ship.

(11) It is a defence to a prosecution for an offence against sub-section (5) or (7) in respect of the disembarkation of a person from an aircraft or ship if the person charged establishes that, having regard to the condition of the aircraft or ship and the circumstances in which the aircraft or ship was placed at the time the person so disembarked, there were reasonable grounds to believe



that, if the person had remained on board the aircraft or ship, he would have been in danger of being killed or injured.

**Permits to disembark from certain vessels**

9. (1) This section applies to an aircraft to which this Act applies if, but only if, the master of the aircraft has made, in respect of the landing of the aircraft in Australia, a claim referred to in sub-section 18 (1) or 19 (1).

(2) This section applies to a ship to which this Act applies if, but only if, the master of the ship has made, in respect of the bringing of the ship into Australian waters or the passage of the ship through the territorial sea of Australia, a claim referred to in sub-section 18 (2) or 19 (2).

(3) In this section—

“relevant passenger” means—

- (a) in relation to an aircraft, or to a vessel (being an aircraft), to which this section applies—a person who was on board the aircraft when it landed in Australia; and
- (b) in relation to a ship, or to a vessel (being a ship), to which this section applies—a person who was on board the ship when it entered Australian waters,

other than such a person—

- (c) who is an Australian citizen;
- (d) who is the holder of an entry permit in force under the *Migration Act 1958*; or
- (e) who is, by virtue of section 8 of the *Migration Act 1958*, a person in relation to whose entry into Australia Division 1 of Part II of that Act does not apply;

“vessel to which this section applies” means an aircraft to which this section applies or a ship to which this section applies.

(4) An authorized officer—

- (a) may grant to a relevant passenger who is on board an aircraft to which this section applies at a place in Australia other than an appointed airport a permit to disembark from the aircraft;
- (b) may grant to a relevant passenger who is at the appointed airport at which he disembarked from an aircraft to which this section applies a permit to leave the airport; and
- (c) may grant to a relevant passenger who is on board a ship to which this section applies in Australian waters a permit to disembark from the ship.

(5) A permit under sub-section (4)—

- (a) shall be in writing; and
- (b) may provide that the permit is granted subject to conditions required to be complied with either before or after the holder disembarks from

the aircraft or ship or leaves the appointed airport, as the case requires.

(6) An authorized officer may, in his discretion, specify in a permit granted under sub-section (4) to a relevant passenger on a vessel to which this section applies that it extends to the spouse or a child of the relevant passenger who is also a relevant passenger on the vessel, and, if he does so, then, for all purposes of this Act, that permit shall be deemed to have been granted to that spouse or that child, as the case may be, as well as to the first-mentioned relevant passenger and each of the persons to whom it is granted or deemed to be granted shall be taken, for the purposes of this Act, to be a holder of the permit.

(7) Where the holder of a permit granted under sub-section (4) disembarks from an aircraft or ship, or leaves an appointed airport, in accordance with that permit, then, for the purposes of the application of the *Migration Act* 1958 to and in relation to the person, the person shall be deemed not to have entered Australia by reason of his having so disembarked or left that appointed airport.

#### **Application of *Migration Act* 1958 to relevant passengers**

10. (1) Notwithstanding sub-section 9 (7), at any time after a permit has been granted to a person under sub-section 9 (4) and before the person departs from Australia, an entry permit may, at the request, or with the consent, of the person, be granted, under the *Migration Act* 1958, to the person authorizing him to enter and remain in Australia, whether for a specified period only or otherwise, and, upon the grant of the entry permit, that Act applies to and in relation to the person as if he had entered Australia immediately after the grant of the entry permit.

(2) At any time after a permit has been granted to a person under sub-section 9 (4) and before an entry permit is granted to the person or the person departs from Australia, the Minister may, in his absolute discretion, by instrument under his hand, direct that, on and after a day specified in the instrument (in sub-section (3) referred to as the “specified day”), the *Migration Act* 1958 shall apply to and in relation to the person.

(3) Where the Minister gives a direction under sub-section (2) in respect of a person, the person shall be deemed, for the purposes of the *Migration Act* 1958, to have entered Australia on the specified day and to have become, by virtue of sub-section 6 (1) of that Act, a prohibited immigrant on that day by reason of his not having been the holder of an entry permit when he entered Australia.

(4) Where the Minister gives a direction under sub-section (2) in respect of a person, the Minister shall cause a copy of the direction to be given to the person and a copy of the direction to be served on the master of the vessel on which the person was brought to Australia, as soon as practicable after he gives the direction, but failure to comply with this sub-section shall not be taken to affect the operation of the direction.

(5) Where an entry permit is granted, under the *Migration Act* 1958, in respect of a person who is the holder of a permit granted under sub-section 9 (4), the officer, within the meaning of that Act, who granted the entry permit shall cause notice of the grant of the entry permit to be served on the master of the vessel on which the person was brought to Australia as soon as practicable after the grant of the entry permit.

(6) Sections 27 and 28 of the *Migration Act* 1958 do not apply to or in relation to the entry of a person into Australia by virtue of sub-section (3).

### **Conveyance of passengers from Australia**

11. (1) An authorized officer may, by notice in writing served on the master of a vessel to which section 9 applies, require the master to cause a relevant passenger specified in the notice, or the relevant passengers specified or referred to in the notice, to be conveyed from Australia, without charge to the Commonwealth, within a period specified in the notice, being a period that, having regard to the circumstances that gave rise to the claim made by the master under section 18 or 19, as the case may be, is a reasonable period.

(2) Where a requirement under sub-section (1) has been served on the master of a vessel to which section 9 applies, the master may give to an authorized officer reasonable notice, in writing, of arrangements made by him for the conveyance from Australia of the relevant passenger specified in the requirement, or of all or any of the relevant passengers specified or referred to in the requirement, as the case may be, and of the date on which, and the time and place at which, that passenger, or each of those passengers, is required to present himself for the purpose of embarking on a vessel for conveyance from Australia.

(3) Where a notice under sub-section (2) with respect to a relevant passenger is given to an authorized officer, that authorized officer, or another authorized officer, may give to the relevant passenger notice, in writing, requiring that passenger to present himself, on the date, and at the time and place, specified in the first-mentioned notice, for the purpose of embarking on a vessel for conveyance from Australia.

(4) An authorized officer—

- (a) may, by notice in writing served on the master of a vessel to which section 9 applies, revoke a requirement under sub-section (1) that had previously been served on the master in respect of a relevant passenger;
- (b) may serve a requirement under sub-section (1) on the master of a vessel in respect of a relevant passenger notwithstanding that such a requirement has previously been served on the master by that authorized officer or another authorized officer in respect of that passenger if the previous requirement had been revoked or if the time for compliance with the previous requirement has expired and the passenger is still in Australia;

- (c) may, by notice in writing served on the master of a vessel on whom a requirement under sub-section (1) has been served, extend the period within which the master is required to cause the relevant passenger or relevant passengers to whom the requirement relates to be conveyed from Australia;
- (d) may, by notice in writing to a relevant passenger on whom a requirement under sub-section (3) has been made, revoke that requirement; and
- (e) may make a requirement on a relevant passenger under sub-section (3) notwithstanding that such a requirement has previously been made by that authorized officer or another authorized officer on the relevant passenger if the previous requirement has been revoked or if the time for complying with the previous requirement has expired and the relevant passenger is still in Australia.

(5) The master of a vessel who has given notice to an authorized officer under sub-section (2) with respect to a relevant passenger—

- (a) may, by notice in writing given to an authorized officer, revoke the notice; and
- (b) may give a further notice to an authorized officer with respect to that passenger notwithstanding that such a notice had previously been given if the previous notice has been revoked or if the time at which the relevant passenger was required to present himself for the purpose of embarking on a vessel for conveyance from Australia has passed and the passenger is still in Australia.

(6) Where the master of a vessel on whom a requirement under sub-section (1) has been served refuses or fails to comply with the requirement in respect of a relevant passenger, the master commits an offence against this sub-section punishable, upon conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

(7) The master of a vessel on whom a requirement under sub-section (1) is served commits a separate offence under sub-section (6) in respect of each relevant passenger to whom the requirement relates who is not conveyed from Australia in accordance with the requirement.

(8) It is a defence to a prosecution of the master of a vessel in respect of a failure to comply with a requirement under sub-section (1) in respect of a relevant passenger if the master proves that, after the requirement was served upon him, he duly gave reasonable notice under sub-section (2) to an authorized officer of the date on which, and time and place at which, the passenger was to present himself for the purposes of embarking on a vessel for conveyance from Australia and the passenger did not present himself on that date and at that time and place, or refused or failed to embark on the vessel concerned when requested to do so.

(9) Sub-section (8) does not apply to a notice under sub-section (2) that has been duly revoked under sub-section (5).

(10) Where an entry permit is granted under the *Migration Act* 1958 in respect of a relevant passenger or a direction is given under sub-section 10 (2) in respect of a relevant passenger—

- (a) a notice under sub-section (1) of this section shall not be served on the master of the vessel on which the passenger was brought to Australia in respect of the passenger on or after the date (in this sub-section referred to as the “relevant date”) on which the entry permit was granted or that is specified in the direction as the date on which the *Migration Act* 1958 shall apply in relation to the passenger, as the case requires;
- (b) if, before the relevant date, a notice under sub-section (1) had been served on the master of the vessel in which the passenger was brought to Australia requiring the master to cause the passenger to be conveyed from Australia within a period ending on or after the relevant date—the master is not required to comply with that requirement;
- (c) a notice shall not be given to the passenger under sub-section (3) on or after the relevant date; and
- (d) if, before the relevant date, a notice had been given to the passenger under sub-section (3) requiring the passenger to present himself at a place on or after the relevant date for the purpose of embarking on a vessel for conveyance from Australia—the passenger is not required to comply with that requirement.

(11) In this section, “relevant passenger”, in relation to a vessel to which section 9 applies, has the same meaning as it has in section 9.

#### **Arrest of passenger from certain vessels**

12. (1) A member of the Australian Federal Police or the Police Force of a State or Territory or any other officer authorized by the Minister for the purposes of this section may, without warrant, arrest a person whom he reasonably believes to be a relevant passenger from a vessel to which section 9 applies—

- (a) who disembarked from the vessel, or left an appointed airport after having disembarked from the vessel, otherwise than in accordance with a permit granted under sub-section 9 (4);
- (b) who has failed to comply with a condition or requirement of a permit granted to him under sub-section 9 (4); or
- (c) who has failed to comply with the requirements of a notice given to him under sub-section 11 (3),

and a person so arrested shall be kept in the custody of any officer or in such other custody as the Minister or an authorized officer directs.

(2) Where an officer arrests a person in pursuance of sub-section (1), the officer shall forthwith inform the person arrested of the reason for the arrest, and the officer or another officer having the custody of that person shall take him before a prescribed authority within 48 hours after the arrest or, if it is not practicable to bring him before a prescribed authority within that period, as soon as practicable after that period.

(3) Where a person is brought before a prescribed authority under this section, the prescribed authority shall enquire into the question whether there are reasonable grounds for believing that the person is a relevant passenger referred to in sub-section (1) and, if the prescribed authority is satisfied that there are such reasonable grounds, he shall, by writing under his hand, authorize the detention of that person in such custody as the Minister or an authorized officer directs—

- (a) until he is conveyed from Australia;
- (b) until he is granted an entry permit under the *Migration Act* 1958; or
- (c) until the Minister gives a direction under sub-section 10 (2) in respect of the person,

whichever first occurs, but, if the prescribed authority is not so satisfied, he shall order that the person be released.

(4) Where arrangements are made, whether in accordance with section 11 or otherwise, for the conveyance of a person held in custody under this section from Australia, an authorized officer may cause the person to be placed on board a vessel for conveyance from Australia in accordance with those arrangements and, if the person is so placed on board a vessel, the power to give directions under sub-section (3) in relation to the custody of the person extends to the giving of directions with respect to the custody of the person on the vessel until her departure from her last port or place of call in Australia.

(5) If, while a person is in custody under this section, the Minister is satisfied that it will not be practicable for the person to be removed from Australia in accordance with a requirement under sub-section 11 (1) served upon the master of a vessel, the Minister shall order that the person be released.

(6) Sub-section (1) does not authorize the arrest of a relevant passenger—

- (a) who is the holder of an entry permit granted under the *Migration Act* 1958; or
- (b) in respect of whom a direction has been given under sub-section 10 (2) of this Act.

(7) A prescribed authority—

- (a) shall make a thorough investigation of the matter which he is required to inquire into, without regard to legal forms, and shall not be bound by any rules of evidence, but may inform himself of any relevant matter in such manner as he thinks fit;
- (b) may take evidence on oath or affirmation; and
- (c) may require a person who appears before the authority to give evidence either to take an oath or make an affirmation, and may administer an oath or affirmation to a person who so appears.

(8) The oath or affirmation to be taken or made by a person for the purposes of paragraph (7) (c) is an oath or affirmation that the answers he will give to questions asked him will be true.

(9) In this section, “relevant passenger”, in relation to a vessel to which section 9 applies, has the same meaning as it has in section 9.

**Master liable for maintenance of passengers**

13. (1) Where a relevant passenger disembarks from an aircraft or ship, or leaves the appointed airport at which he disembarked from an aircraft, in accordance with a permit granted under sub-section 9 (4), the master of the aircraft or ship is liable to pay to the Commonwealth an amount equal to the sum of—

- (a) any amounts paid by the Commonwealth to the person for the maintenance of the person, or of the spouse or a child of the person; and
- (b) any amounts expended by the Commonwealth for the maintenance of the person,

during the period commencing on the day on which he so disembarks or leaves that appointed airport and ending on the day on which he departs from Australia or becomes subject to the provisions of the *Migration Act* 1958 by reason of the grant of an entry permit or the giving of a direction under sub-section 10 (2).

(2) Where a relevant passenger from an aircraft or ship is taken into custody under section 12, the master of the aircraft or ship is liable to pay to the Commonwealth a fair sum—

- (a) for the cost of keeping and maintaining the person while he is kept in custody in pursuance of this Act; and
- (b) in a case where the person is conveyed from Australia in accordance with arrangements under section 11 or otherwise—for the cost of transporting the person, and a custodian of the person, from the place of custody to the ship or aircraft upon which the person is to be conveyed from Australia in accordance with those arrangements.

(3) For the purposes of sub-section (1), an amount paid by the Commonwealth to a person by way of pension, allowance or other benefit under the *Social Services Act* 1947 for the benefit of that person or of the spouse or a child of that person shall be deemed to be an amount paid by the Commonwealth to that person for the maintenance of that person or of that spouse or child, as the case may be.

(4) In this section, “relevant passenger”, in relation to an aircraft or ship to which section 9 applies, has the same meaning as it has in section 9.

**Prescribed authorities**

14. (1) The Governor-General may arrange with the Governor of a State for the performance by all or any of the persons who from time to time hold office as Magistrates in that State of the functions of a prescribed authority under section 12.

(2) The Governor-General may make arrangements with the Administrator of the Northern Territory for the performance by all or any of the persons who from time to time hold office as Magistrates in that Territory of the functions of a prescribed authority under section 12.

(3) Where an arrangement under sub-section (1) or (2) is in force, a person to whom the arrangement applies who holds an office specified in the arrangements is a prescribed authority for the purposes of section 12.

(4) A person who holds office as a Magistrate of the Australian Capital Territory is a prescribed authority for the purposes of section 12.

#### **Persons in custody under section 12**

15. Where a person is in custody under section 12, the person having his custody shall, at the request of the person in custody, afford to him all reasonable facilities for the purpose of obtaining legal advice or taking legal proceedings in relation to his custody.

#### **Powers of officers**

16. An officer may, for the purpose of ascertaining whether an offence against sub-section 6 (1), (2), (3) or (4), 7 (1) or 8 (5) or (7) has been committed in relation to a vessel, being an aircraft that has landed in Australia or a ship that is in Australian waters—

- (a) board the vessel and search the vessel;
- (b) require the master of the vessel to give information to the officer concerning the vessel, and the persons who have been brought to Australia on the vessel;
- (c) require a person who has been brought to Australia on the vessel to state his name and ordinary place of abode to the officer, and to give information to the officer and produce to him documents in his possession or under his control;
- (d) require the master of the vessel to produce to the officer all or any of the books and papers in his possession or under his control relating to the vessel or the persons who have been brought to Australia on the vessel; and
- (e) take copies of, or extracts from, any documents, books or papers produced to him in pursuance of a requirement under this section or found by him in the course of searching the vessel.

#### **Detention of vessels**

17. (1) An authorized officer, or an officer who has been requested by an authorized officer, by writing under his hand, to do so, may detain a vessel, or cause a vessel to be detained, at the place where she is found or cause her to be brought to such other place or places as the authorized officer from time to time deems appropriate and detain the vessel or cause the vessel to be detained at that place or at those places—



- (a) if the authorized officer has reasonable grounds to believe that an offence has been committed against sub-section 6 (1), (2), (3) or (4), 7 (1) or 8 (5) or (7) in relation to the vessel; or
- (b) if an officer has been prevented from boarding the vessel in pursuance of the power conferred by paragraph 16 (a).

(2) Where a vessel is detained by, or at the request of, an authorized officer, the authorized officer shall, as soon as practicable after he has ascertained the identity of the owner, agent or charterer of the vessel, give notice of the detention of the vessel to the owner, agent or charterer, as the case may be.

(3) For the purposes of the detention and other lawful dealings with a vessel, a person authorized under sub-section (1) to detain the vessel is entitled to take with him, and to have the assistance of, any police officers and other persons that he may think necessary.

(4) A person (not being an officer) who moves, or assists a person (not being an officer) in moving, a vessel from the place at which she is detained under sub-section (1) except with the permission, in writing, of an authorized officer, or at the direction of the officer by whom she is detained, commits an offence against this sub-section punishable, upon conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

**Minister may require vessels to be repaired**

**18. (1)** Where the master of an aircraft to which this Act applies has claimed that an unforeseen emergency affecting the airworthiness of the aircraft rendered it necessary for the aircraft to be landed in Australia in order to secure the safety of the aircraft, of its cargo or of human life, the Minister may, by notice in writing served on the master of the aircraft, require the master to cause the aircraft to be made airworthy within the period specified in the notice.

(2) Where the master of a ship to which this Act applies has claimed that—

- (a) an unforeseen emergency affecting the seaworthiness of the ship rendered it necessary for the ship to be brought into Australian waters in order to secure the safety of the ship, of its cargo or of human life; or
- (b) an unforeseen emergency affecting the seaworthiness of the ship occurred while the ship was passing through the territorial sea of Australia in the exercise of the right of innocent passage in the course of a voyage from a place in a country other than Australia to another place in a country other than Australia,

the Minister may, by notice in writing served on the master of the ship, require the master to cause the ship to be made seaworthy within the period specified in the notice.

(3) Where the Minister is satisfied that it is not reasonably practicable for a vessel to be made airworthy or seaworthy, as the case requires, within the

period specified in a notice served on the master of the vessel under sub-section (1) or (2), the Minister may, by a further notice in writing served on the master of the vessel, vary that first-mentioned notice by extending the period within which the vessel is to be made airworthy or seaworthy, as the case requires.

(4) Where the master of a vessel fails to comply with a notice under sub-section (1) or (2) that has been served on him, he is guilty of an offence against this sub-section punishable, upon conviction, by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 10 years, or both.

(5) References in sub-sections (3) and (4) to a notice under sub-section (1) or (2) shall be read as including references to a notice under sub-section (1) or (2), as the case requires, as varied by a notice or notices under sub-section (3).

**Vessels may be required to depart**

**19. (1) Where—**

- (a) the master of an aircraft to which this Act applies has claimed that an unforeseen emergency rendered it necessary for the aircraft to be landed in Australia in order to secure the safety of the aircraft, of its cargo or of human life; and
- (b) the Minister is satisfied that the circumstances giving rise to the emergency have ceased to exist,

the Minister may, by notice in writing served on the master of the aircraft, require the master to cause the aircraft to leave Australia within the period specified in the notice.

**(2) Where—**

- (a) the master of a ship to which this Act applies has claimed that—
  - (i) an unforeseen emergency rendered it necessary for the ship to be brought into Australian waters in order to secure the safety of the ship, of its cargo or of human life; or
  - (ii) an unforeseen emergency occurred while the ship was passing through the territorial sea of Australia in the exercise of the right of innocent passage in the course of a voyage from a place in a country other than Australia to another place in a country other than Australia; and
- (b) the Minister is satisfied that the circumstances giving rise to the emergency have ceased to exist,

the Minister may, by notice in writing served on the master of the ship, require the master to cause the ship to leave Australian waters within the period specified in the notice.

(3) Where the Minister is satisfied that it is not reasonably practicable for the aircraft to leave Australia or the ship to leave Australian waters, as the case requires, within the period specified in the notice served on the master under sub-section (1) or (2), the Minister may, by a further notice in writing served on the master, vary that first-mentioned notice by extending the period within

which the aircraft is to leave Australia or the ship is to leave Australian waters, as the case requires.

(4) Where the master of a vessel fails to comply with a notice under sub-section (1) or (2) that has been served on him, he is guilty of an offence against this sub-section punishable, upon conviction, by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 10 years, or both.

(5) References in sub-sections (3) and (4) to a notice under sub-section (1) or (2) shall be read as including references to a notice under sub-section (1) or (2), as the case requires, as varied by a notice or notices under sub-section (3).

**Court may order forfeiture of vessel and cargo**

**20. (1) Where—**

- (a) the master of a vessel is convicted of an offence against sub-section 6 (1), 7 (1), 8 (5) or (7), 11 (6), 18 (4) or 19 (4);
- (b) a member of the crew of a vessel is convicted of an offence against sub-section 6 (1), 7 (1) or 8 (5) or (7); or
- (c) the owner, the agent or the charterer of a vessel is convicted of an offence against sub-section 6 (2),

the court may, in addition to imposing a penalty in respect of the offence, order the forfeiture either of the vessel or of the vessel and its cargo.

(2) Where a court makes an order for forfeiture of a vessel or of a vessel and its cargo, that vessel, or that vessel and its cargo, as the case may be—

- (a) becomes, upon the making of the order, the property of the Crown in right of the Commonwealth; and
- (b) shall be dealt with and disposed of in accordance with the directions of the Minister.

(3) A reference in this section (other than in paragraph (a), (b) or (c) of sub-section (1)) to a vessel shall be read as including a reference to the vessel's fittings and equipment and to any ship's stores or aircraft's stores on board the vessel.

**Obstruction of officers, &c.**

**21. A person shall not—**

- (a) fail to facilitate by all reasonable means the boarding of a vessel by an officer under section 16 or the detention of a vessel in pursuance of a direction given under section 17;
- (b) refuse to allow a search to be made which is authorized by section 16;
- (c) refuse or neglect to comply with a requirement made by an officer under section 16;
- (d) when lawfully required to state his name to an officer, state a false name to the officer;
- (e) when lawfully required to state his ordinary place of abode to an officer, state to the officer as the address of his ordinary place of abode

an address other than the full and correct address of his ordinary place of abode; or

- (f) when lawfully required by an officer to give information, give false or misleading information to the officer.

Penalty: \$1,000 or imprisonment for 6 months.

### **Evidence**

**22.** In proceedings for an offence against sub-section 6 (1), (2), (3) or (4), 7 (1), 8 (5) or (7), 11 (6), 18 (4) or 19 (4) in relation to a vessel, a certificate by the Minister that a person specified in the certificate was, at a time, or at all times during a period, specified in the certificate a relevant person is *prima facie* evidence of the matter certified to.

### **Prosecutions**

**23. (1)** Proceedings for—

- (a) the commitment of a person for trial on indictment for an offence against sub-section 6 (1), (2), (3) or (4), 7 (1), 18 (4) or 19 (4); or
- (b) the summary prosecution of an offence against sub-section 6 (1), (2), (3) or (4), 7 (1), 18 (4) or 19 (4),

shall not be instituted except with the consent in writing of the Attorney-General or of a person authorized by the Attorney-General, by writing under his hand, to give such a consent.

**(2)** Notwithstanding that a consent has not been given in relation to an offence against a provision of this Act in accordance with sub-section (1)—

- (a) a person may be charged with such an offence;
- (b) a person may be arrested for such an offence, and a warrant for such an arrest may be issued and executed; and
- (c) a person so charged may be remanded in custody or on bail,

but no further step in proceedings of a kind referred to in that sub-section shall be taken in relation to the offence until such a consent has been obtained.

**(3)** Nothing in sub-section (2) shall be taken to prevent the discharging of the accused if the proceedings are not continued within a reasonable time.

### **Offences against this Act may be dealt with summarily**

**24. (1)** Where a person is charged with an indictable offence against this Act, a court of summary jurisdiction may, with the consent of the defendant and of the prosecutor and if the court is satisfied that it is proper to do so, determine the charge summarily.

**(2)** Where, in accordance with sub-section (1), a court of summary jurisdiction convicts a person of an offence against sub-section 6 (1), (2), (3) or (4), 7 (1), 8 (5) or (7), 11 (6), 18 (4) or 19 (4), the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 1 year, or both.

### **Jurisdiction of courts**

**25. (1)** A provision of the *Judiciary Act* 1903 by which a court of a State is invested with jurisdiction with respect to offences against the laws of the Commonwealth has effect, in relation to offences against this Act, as if that jurisdiction were so invested without limitation as to locality other than the limitation imposed by section 80 of the Constitution.

**(2)** Subject to section 80 of the Constitution, where a person has committed an offence against a provision of this Act outside a Territory and is found in, or brought into, the Territory, a court of the Territory has the same jurisdiction in respect of the offence as it would have if the offence had been committed in the Territory.

**(3)** The trial of an offence against a provision of this Act not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

### **Powers of arrest**

**26. (1)** A person who is—

- (a) an officer of the Department of Immigration and Ethnic Affairs; or
- (b) an officer for the purposes of the *Customs Act* 1901,

may, without warrant, arrest a person if he has reasonable grounds to believe—

- (c) that the person is committing or has committed any offence against this Act; and
- (d) that proceedings against the person by summons would not be effective.

**(2)** A person who arrests another person in accordance with sub-section (1) shall, forthwith after the arrest, take the other person before a magistrate to be dealt with according to law or deliver the person into the custody of a member of the Australian Federal Police or of the Police Force of a State or Territory.

**(3)** This section does not affect any power to arrest a person without warrant that is conferred by any other law of the Commonwealth or by a law of a State or Territory on a person other than a police officer.

### **Service of notices**

**27.** For the purposes of this Act, a notice may be served on a master of a vessel—

- (a) by serving it on him personally;
- (b) by leaving it on board the vessel for the master with any person for the time being in charge, or appearing to be in charge, of the vessel; or
- (c) in such other manner as is prescribed.

### **Delegation**

**28. (1)** The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer any of his powers under this Act other than this power of delegation.

**(2)** A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

**(3)** A delegation under this section does not prevent the exercise of a power by the Minister.

### **This Act not to affect liability of persons under other laws**

**29.** Nothing in this Act shall be taken to affect the operation of any other law of the Commonwealth or the operation of any law of a State or Territory with respect to the seizing or taking control of vessels, unlawfully, by force or threat of force or by any form of intimidation.

### **Regulations**

**30.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—

- (a)** prescribing the practice and procedure in relation to proceedings before a prescribed authority under this Act, including the summoning of witnesses, the production of documents and the payment of expenses of witnesses; and
- (b)** prescribing penalties not exceeding a fine of \$1,000 or imprisonment for 6 months in respect of offences against the regulations.

### **Cessation of operation of Act**

**31. (1)** Subject to sub-section (3), this Act, unless sooner repealed, shall cease to be in force at the expiration of the date that is 12 months after the date fixed under section 2.

**(2)** The Governor-General may, by Proclamation made within the period of 12 months immediately preceding the date (including the date previously fixed by Proclamation under this sub-section) at the expiration of which this Act would, but for the making of the Proclamation, cease to be in force, fix as the date at the expiration of which this Act shall cease to be in force a date that is not more than 12 months after the first-mentioned date.

**(3)** Where a date has been fixed, or dates have been fixed, under sub-section (2), this Act, unless sooner repealed, shall cease to be in force at the expiration of the date, or the last date, as the case may be, so fixed.

**(4)** A Proclamation shall not be made under sub-section (2) except in accordance with a resolution passed by each House of the Parliament.

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**(5)** For the purpose of section 8 of the *Acts Interpretation Act* 1901, when this Act ceases to be in force by virtue of sub-section (1) or (3), it shall thereupon be deemed to have been repealed by an Act other than this Act.