



# **Customs Amendment (Tenders) Act 1981**

**No. 45 of 1981**

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**An Act to amend the *Customs Act 1901* to provide for tenders for rights to import goods at concessional rates of duty, and for related purposes**

*[Assented to 14 May 1981]*

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

**Short title, &c.**

1. (1) This Act may be cited as the *Customs Amendment (Tenders) Act 1981*.

(2) The *Customs Act 1901*<sup>1</sup> is in this Act referred to as the Principal Act.

**Commencement**

2. This Act shall come into operation on the day on which it receives the Royal Assent.

**Right to require security**

3. Section 42 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) The right of the Customs under sub-section (1) to require and take a security includes the right to require and take securities for payment of any penalty that a person may become liable to pay to the Commonwealth under the *Customs Undertakings (Penalties) Act 1981*.”.

4. After Part XIV of the Principal Act the following Part is inserted:

**“PART XV—TENDERS FOR RIGHTS TO IMPORT GOODS AT CONCESSIONAL RATES**

**Interpretation**

“265. 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;

‘year’ means a period of 12 months.

**Tender schemes**

“266. (1) The Minister may formulate a scheme for calling, and dealing with, tenders for the right to import a determined quantity of particular goods, or particular goods of a determined value, during a year 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 sub-section (2), the 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.

**Undertakings relating to tenders**

“267. (1) Where, in accordance with a call for tenders made under a scheme, a person furnishes a tender for the right to import during a year a quantity to be determined in accordance with his tender of particular goods, or particular goods of a value to be determined in accordance with his tender, at rates of duty to be determined in accordance with his tender, that tender shall not be considered unless it is accompanied by an undertaking in writing by that person, in terms satisfactory to the Minister, that, if his tender is accepted and—

- (a) the *Customs Tariff Act* 1966 is so altered or proposed to be so altered that rates of duty determined in accordance with his 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 Minister makes a determination under section 273 by virtue of which those items or proposed items apply to the quantity determined in accordance with his tender of those goods, or the quantity of those goods having the value determined in accordance with his tender, to be imported by that person during that year,

he will, during that year, import into Australia that quantity of those goods, or the quantity of those goods having that value, and enter for home consumption, 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, the goods so imported.

“(2) An undertaking referred to in sub-section (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 by the Minister, in accordance with sub-section (2) of section 266, in the relevant call for tenders.

“(3) An undertaking referred to in sub-section (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 by the Minister, in accordance with sub-section (4) of section 266, 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.

**Transfers of rights to import goods at concessional rates of duty**

“268. (1) A scheme may provide for the transfer, with the approval of the Minister, from one person to another of a right to import a specified quantity of particular goods, or particular goods of a specified value, during a year at concessional rates of duty.

“(2) The Minister shall not give an approval to a transfer under a scheme of a right to import 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 Minister, 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 imported by the transferee in the exercise of the right, the transferee will, in the exercise of that right, import into Australia that quantity of those goods, or the quantity of those goods having that value, and enter them for home consumption 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 sub-section (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 the corresponding statement in the undertaking given by the transferor in relation to those goods.

“(4) An undertaking referred to in sub-section (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.

**Revocation or variation of undertaking**

“269. A person who has given an undertaking in accordance with section 267 or 268 may, with the approval of the Minister, revoke or vary that undertaking.

**Recovery of penalties**

“269A. 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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**NOTE**

1. No. 6, 1901, as amended. For previous amendments, see 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 133, 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; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116, 177 and 180, 1979; and Nos. 13, 15 and 110, 1980.