



Export Inspection Charge Collection Act 1985

No. 27 of 1985

**An Act to make provision for the collection of the charges
imposed by the *Export Inspection Charge Act 1985***

[Assented to 22 May 1985]

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 *Export Inspection Charge Collection Act 1985*.

Commencement

2. This Act shall come into operation on the day that is fixed by Proclamation for the purposes of sub-section 2 (2) of the *Export Inspection Charge Act 1985*.

Interpretation

3. In this Act, unless the contrary intention appears—
“authorized agent” means the person appointed by an exporter under sub-section 8 (1) to be the authorized agent of the exporter;

“authorized person” means a person who is, by virtue of an appointment made under section 14, an authorized person for the purposes of the provision in which the expression appears;

“establishment” means an establishment that is registered in accordance with regulations or orders made under the *Export Control Act 1982*;

“exporter”, in relation to a prescribed commodity, means the person in whose name an export permit in respect of that prescribed commodity is granted;

“prescribed office” means an office in the Department, being an office that is prescribed for the purposes of this Act.

Date due for payment

4. The amount of charge on a prescribed commodity in respect of which an export permit is granted is due for payment on the expiration of 28 days after the last day of the month in which the export permit was granted.

Manner of payment

5. The payment of an amount payable to the Commonwealth under this Act in relation to a prescribed commodity in respect of which an export permit is granted shall be made at the prescribed office at which the return relating to that prescribed commodity is lodged.

Returns

6. (1) The exporter of a prescribed commodity or of prescribed commodities shall, in relation to the prescribed commodity or the prescribed commodities in respect of which an export permit was, or export permits were, granted in any month, submit a return to the Secretary containing the particulars specified in sub-section (2).

(2) The particulars required to be specified in a return submitted under sub-section (1) are the following particulars:

- (a) the full name and address of the exporter;
- (b) the month to which the return relates;
- (c) in respect of each export permit granted to the exporter during the month to which the return relates—
 - (i) the serial number of the permit;
 - (ii) the date on which the permit was granted;
 - (iii) the quantity of the prescribed commodity, or each prescribed commodity, in respect of which the permit was granted;
 - (iv) if the permit was granted in respect of a prescribed commodity, or prescribed commodities, other than grain—the establishment at which that prescribed commodity, or each of those prescribed commodities, was prepared; and
 - (v) the amount of charge imposed on the prescribed commodity, or each prescribed commodity, in respect of which the permit was granted;

- (d) the total amount of charge for which the exporter became liable during the month to which the return relates.
- (3) Where different rates of charge have been prescribed in respect of different classes of a prescribed commodity in respect of which an export permit has been granted—
 - (a) the requirement in sub-paragraph (2) (c) (iii) to specify in a return the quantity of that prescribed commodity shall be construed as a requirement to specify the quantity of the prescribed commodity that is included in each such class of that prescribed commodity to which the permit relates;
 - (b) the requirement in sub-paragraph (2) (c) (iv) to specify in a return the establishment at which that prescribed commodity was prepared shall be construed as a requirement to specify the establishment at which the prescribed commodity that is included in each such class of that prescribed commodity to which the permit relates was prepared; and
 - (c) the requirement in sub-paragraph (2) (c) (v) to specify in a return the amount of charge imposed on that prescribed commodity shall be construed as a requirement to specify the amount of charge imposed on the prescribed commodity that is included in each such class of that prescribed commodity to which the permit relates.
- (4) In this section, a reference to an establishment at which the prescribed commodity was prepared is a reference to the last establishment at which the prescribed commodity was processed.
- (5) Where a manner for determining the weight or the volume of a prescribed commodity is prescribed by regulation, the quantity of a prescribed commodity shall, for the purposes of sub-paragraph (2) (c) (iii), be determined in whichever manner is appropriate for a determination of the charge payable in respect of that prescribed commodity.

Execution and lodgment of returns

7. A return referred to in section 6—

- (a) shall be signed—
 - (i) where the exporter is a natural person—by that person or by the authorized agent of that person;
 - (ii) where the exporter is a body corporate—by the person who manages or controls the operations of the body corporate in relation to the export of the prescribed commodity or prescribed commodities, or by the authorized agent of that body corporate; and
 - (iii) where the exporter is a body politic—by the person having responsibility for the administration of such of the affairs of the body politic as relate to the export of the prescribed commodity or prescribed commodities, or by the authorized agent of that body politic; and

- (b) shall be submitted to the Secretary by lodging it at a prescribed office within 28 days after the last day of the month to which the return relates.

Authorized agents

8. (1) An exporter who is required to provide a return to the Secretary under sub-section 6 (1), may, by writing, appoint a person to be the exporter's authorized agent for the purpose of signing that return.

- (2) The instrument of appointment of an authorized agent—
 - (a) shall be in accordance with the prescribed form; and
 - (b) when completed, shall be lodged at the prescribed office, or at each prescribed office, at which returns of the exporter are to be lodged.

Records to be kept

9. (1) An exporter of a prescribed commodity shall, in respect of each export permit granted to the exporter in relation to that prescribed commodity, keep, or cause to be kept, such records as will enable the exporter to prepare such returns as are required to be provided by the exporter under sub-section 6 (1).

(2) Records kept pursuant to sub-section (1) shall be retained by the exporter for a period of 3 years from the date on which the export permit was granted.

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

Offences relating to returns, &c.

10. (1) A person shall not, without reasonable excuse, refuse or fail to submit a return or provide information that is required by or under this Act or the regulations to be submitted or provided.

(2) It is a reasonable excuse for the purposes of sub-section (1) for a person to refuse or fail to submit a return or provide information that the submission of the return or the provision of the information might tend to incriminate the person.

(3) A person shall not knowingly present a document, make a statement or submit a return, that is false or misleading in a material particular, to a person performing duties in relation to this Act.

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (b) in the case of a body corporate—\$5,000.

Penalty for non-payment

11. (1) Where the liability of a person to pay any charge is not discharged on or before the day on which the charge is due for payment, there is payable by that person to the Commonwealth by way of penalty, in addition to that charge, an amount calculated at the rate of 20% per annum upon that charge or upon such part of that charge as from time to time remains unpaid, to be computed from the time when that charge became due for payment.

(2) The Minister or, subject to sub-section (3), an authorized person may, in a particular case, for a reason that the Minister or the authorized person, as the case may be, in his or her discretion, thinks sufficient, remit the whole or a part of an amount payable under this section.

(3) The power under sub-section (2) to remit the whole or a part of an amount payable under this section shall not be exercised by an authorized person in a case where the amount exceeds \$1,000.

Export permits not to be granted if charge unpaid

12. Where---

- (a)** an export permit has been granted to a person in respect of a prescribed commodity; and
- (b)** the person has not paid the amount of the charge required to be paid in respect of that prescribed commodity by the day on which that amount is required, under section 4, to be paid,

no further export permit shall be granted to the person until that amount of charge, and the penalty (if any) payable in respect of the late payment of that amount, has been paid in full.

Recovery of charge

13. The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a)** an amount of charge that is due for payment;
- (b)** an amount payable by way of penalty under section 11.

Appointment of authorized persons

14. The Minister may, by writing signed by the Minister, appoint a person to be an authorized person, or persons included in a class of persons to be authorized persons, for the purposes of a specified provision of this Act.

Access to premises

15. (1) An authorized person may, with the consent of the occupier of any premises, enter those premises for the purpose of performing the functions of an authorized person under this section.

(2) Where an authorized person has reason to believe that there are on any premises examinable documents, the authorized person may make an application to a Justice of the Peace for a warrant authorizing the authorized

person to enter the premises for the purpose of performing the functions of an authorized person under this section.

(3) If, on an application under sub-section (2), the Justice of the Peace is satisfied, by information on oath or affirmation, that—

- (a) there is reasonable ground for believing that there are on the premises examinable documents; and
- (b) the issue of the warrant is reasonably required for the purposes of this Act,

the Justice of the Peace may issue a warrant authorizing the authorized person, with such assistance as the authorized person thinks necessary, to enter the premises during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of performing the functions of an authorized person under this section.

(4) A Justice of the Peace shall not issue a warrant under sub-section (3) unless—

- (a) an affidavit has been provided to the Justice of the Peace setting out the grounds on which the issue of the warrant is being sought; and
- (b) the applicant or some other person has given to the Justice of the Peace, either orally or by affidavit, such further information (if any) as the Justice of the Peace requires concerning the grounds on which the issue of the warrant is being sought.

(5) Where a Justice of the Peace issues a warrant under sub-section (3), the Justice of the Peace shall specify in writing which of the grounds specified in the affidavit provided in accordance with sub-section (4) the Justice of the Peace has relied on to justify the issue of the warrant and particulars of any other grounds relied on by the Justice of the Peace to justify the issue of the warrant.

(6) A warrant issued under sub-section (3) shall specify a day, not being a day later than one month after the day of issue of the warrant, upon which the warrant ceases to have effect.

(7) Where an authorized person has entered any premises pursuant to sub-section (1) or pursuant to a warrant issued under sub-section (3), the authorized person may perform the functions of an authorized person under this section.

(8) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting pursuant to sub-section (1) or (7) or pursuant to a warrant issued under sub-section (3).

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

(9) The functions of an authorized person under this section are to search for, inspect, take extracts from, and make copies of, any examinable documents for the purpose of ascertaining whether the provisions of this Act, and the regulations made under this Act, have been or are being complied with.

(10) In this section—

“examinable documents” mean any documents relating to the granting of an export permit, or to the submission of a return under this Act;

“occupier”, in relation to premises, includes the person in charge of the premises.

Reconsideration and review of decisions

16. (1) In this section, unless the contrary intention appears—

“decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

“relevant decision” means a decision of an authorized person under sub-section 11 (2);

“reviewable decision” means—

(a) a decision of the Minister under sub-section 11 (2); or

(b) a decision of the Minister under sub-section (4) of this section.

(2) A person affected by a relevant decision who is dissatisfied with the decision may, within 21 days after the day on which the decision first comes to the notice of the person, or within such further period as the Minister (either before or after the expiration of that period), by notice in writing served on the person, allows, by notice in writing given to the Minister, request the Minister to reconsider the decision.

(3) There shall be set out in the request the reasons for making the request.

(4) The Minister shall, within 45 days after the receipt of the request, reconsider the relevant decision and may make a decision—

(a) in substitution for the relevant decision whether in the same terms as the relevant decision or not; or

(b) revoking the relevant decision.

(5) Where, as a result of a reconsideration under sub-section (4), the Minister makes a decision in substitution for or revoking the relevant decision, the Minister shall, by notice in writing served, either personally or by post, on the person who made the request under sub-section (2) for the reconsideration, inform the person of the result of the reconsideration, set out findings on material questions of fact, refer to the evidence or other material on which those findings were based and give the reasons for his or her decision.

(6) An application may be made to the Administrative Appeals Tribunal for a review of a reviewable decision.

(7) Where a relevant decision is made and the person who made the relevant decision gives to a person whose interests are affected by the decision notice in writing of the making of the decision, that notice shall include a statement to the effect that a person affected by the decision—

(a) may, if the person is dissatisfied with the decision, seek a reconsideration of the decision by the Minister in accordance with sub-section (2); and

- (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if the person is dissatisfied with a decision of the Minister upon that reconsideration, make application to the Administrative Appeals Tribunal for review of that decision.

(8) Where the Minister makes a reviewable decision and gives to a person whose interests are affected by the decision notice in writing of the making of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.

(9) Any failure to comply with the requirements of sub-section (7) or (8) in relation to a decision does not affect the validity of the decision.

Regulations

17. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular—

- (c) prescribing the manner for the determination of the weight or the volume of a prescribed commodity;
- (d) prescribing the form of warrant for the purposes of section 15; and
- (e) providing for the remission or refund of charge in specified circumstances.

[Minister's second reading speech made in—
House of Representatives on 17 April 1985
Senate on 10 May 1985]