



Customs and Excise Legislation Amendment Act 1985

No. 40 of 1985

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Customs and Excise Legislation Amendment Act 1985

No. 40 of 1985

An Act to amend the *Customs Act 1901*, the *Excise Act 1901* and certain other Acts, and for related purposes

[Assented to 30 May 1985]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Customs and Excise Legislation Amendment Act 1985*.

Commencement

2. (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(2) Sections 1, 2, 18, 19, 20, 21 and 22 shall come into operation on the day on which this Act receives the Royal Assent.

(3) Sections 4, 7, 9, 10, 11, 12, 34, 35, 36 and 44 shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

(4) Section 8 shall come into operation on the day on which section 4 of the *Customs and Excise Amendment Act 1983* comes into operation.

(5) Sub-section 21 (1) shall be deemed to have come into operation on 1 January 1983.

(6) Sections 24 and 25 shall come into operation, or shall be deemed to have come into operation, as the case requires, on the commencement of the *Customs Tariff (Stand-By Duty) Act 1985*.

(7) Part III shall be deemed to have come into operation immediately before the commencement of section 3 of the *Customs Amendment Act 1979*.

(8) Sections 29 and 31 of the Principal Act shall be deemed to have come into operation on 1 April 1985.

(9) Section 30 shall come into operation on the day on which section 74 of the *Customs and Excise Amendment Act 1982* comes into operation.

(10) Section 38 shall be deemed to have come into operation on the commencement of section 9 of the *Excise Tariff Amendment Act 1985*.

(11) Sections 45 and 46 shall be deemed to have come into operation immediately after the amendments of the *Excise Act 1901* made by the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984* came into operation.

PART II—AMENDMENTS OF CUSTOMS ACT 1901

Principal Act

3. The *Customs Act 1901*¹ is in this Part referred to as the Principal Act.

Entry of goods

4. Section 36 of the Principal Act is amended—

- (a) by omitting “and” from paragraph (g) of the definition of “appropriate Collector” in sub-section (3); and
- (b) by inserting after paragraph (h) of that definition the following word and paragraph:

“and (j) in relation to goods that are being entered pursuant to section 128A, a Collector for the place at which the goods are to be loaded as ship’s stores within the meaning of Part VII or aircraft’s stores within the meaning of Part VII, as the case requires;”.

Ships and aircraft to obey signals

5. Section 59 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “coast of Australia” and substituting “base line of the territorial sea of Australia, within 12 nautical miles of the coast of an island forming part of Australia”;
- (b) by omitting from paragraph (2) (b) “coast of Australia” and substituting “base line of the territorial sea of Australia, within 12 nautical miles of the coast of an island forming part of Australia”;

- (c) by omitting from sub-paragraph (4) (b) (ii) “coast of Australia; or” and substituting “base line of the territorial sea of Australia;”; and
- (d) by inserting after sub-paragraph (4) (b) (ii) the following sub-paragraph:
 - “(iia) the waters within 12 nautical miles of the coast of an island forming part of Australia; or”.

6. Section 73 of the Principal Act is repealed and the following section is substituted:

Breaking bulk

“73. (1) Subject to sub-section (3), except with the permission of a Collector, a person shall not break the bulk cargo of a ship arriving in, or on a voyage to, Australia while the ship is within 12 nautical miles of the base line of the territorial sea of Australia or within 12 nautical miles of the coast of an island forming part of Australia.

Penalty: \$25,000.

“(2) Subject to sub-section (3), except with the permission of a Collector, a person shall not break the bulk cargo of an aircraft arriving in, or on a flight to, Australia while the aircraft is—

- (a) flying over Australia;
- (b) in, or flying over, the waters within 12 nautical miles of the base line of the territorial sea of Australia; or
- (c) in, or flying over, the waters within 12 nautical miles of the coast of an island forming part of Australia.

Penalty: \$25,000.

“(3) Sub-sections (1) and (2) do not apply in respect of goods authority to deal with which has been given under section 39.”.

Entry of warehoused goods

7. Section 99 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “or”;
- (b) by adding at the end of sub-section (1) the following paragraphs:

- “(c) for use as ship’s stores; or
- (d) for use as aircraft’s stores.”; and

- (c) by adding at the end the following sub-sections:

“(4) Warehoused goods, other than goods to which section 128B applies, shall not be taken from the warehouse for use as ship’s stores within the meaning of Part VII unless—

- (a) they have been entered for use as ship’s stores; and
- (b) an authority to deal with the goods in accordance with that entry has been given under section 39.

“(5) Warehoused goods, other than goods to which section 128B applies, shall not be taken from the warehouse for use as aircraft’s stores within the meaning of Part VII unless—

- (a) they have been entered for use as aircraft’s stores; and
- (b) an authority to deal with the goods in accordance with that entry has been given under section 39.”.

Requirements for grant of depot licence

8. Section 106 of the Principal Act is amended by omitting paragraphs (4) (a) and (b) and substituting the following paragraphs:

- “(a) the location of the place in relation to which the licence is sought (in this sub-section referred to as the ‘relevant place’);
- (b) the size of the part of the relevant place that would be used for the storage of cargo if the relevant place were a depot;
- (c) the size of the part of the relevant place that would be used for the handling of cargo if the relevant place were a depot;
- (d) the quantity or weight of goods that would be likely to be dealt with at the relevant place in a year if the relevant place were a depot;
- (e) the number of containers of a particular kind that would be likely to be dealt with at the relevant place in a year if the relevant place were a depot;
- (f) the number of lines of a particular kind on the bills of lading, airway bills and similar commercial documents that would be likely to be processed at the relevant place in a year if the relevant place were a depot; or
- (g) the number of consignments of cargo that would be likely to be processed at the relevant place in a year if the relevant place were a depot.”.

Unshipment of ship’s and aircraft’s stores

9. Section 128 of the Principal Act is amended—

- (a) by omitting “Ships’ ” and substituting “Subject to this Act, ship’s”; and
- (b) by adding at the end the following sub-sections:

“(2) Subject to this Act, ship’s stores that, without being unshipped from the ship on which they are ship’s stores, are, with the consent of a Collector, to be used otherwise than by the passengers or crew of the ship or for the service of the ship shall be entered for home consumption.

“(3) Subject to this Act, aircraft’s stores that, without being unloaded from the aircraft on which they are aircraft’s stores, are, with the consent of a Collector, to be used otherwise than by the passengers or crew of the aircraft or for the service of the aircraft shall be entered for home consumption.”.

10. After section 128 of the Principal Act the following sections are inserted:

Entry of ship's stores and aircraft's stores

“128A. (1) Subject to this Act, goods that are intended to be used as ship's stores are required to be entered for use as ship's stores and the owner of the goods shall not allow the goods to be taken on board a ship unless and until authority under section 39 to take the goods on board the ship has been given.

Penalty: \$1,000.

“(2) Subject to this Act, goods that are intended to be used as aircraft's stores are required to be entered for use as aircraft's stores and the owner of the goods shall not allow the goods to be taken on board an aircraft unless and until authority under section 39 to take the goods on board the aircraft has been given.

Penalty: \$1,000.

“(3) Sub-sections (1) and (2) do not apply in relation to—

- (a) goods that are excisable goods within the meaning of the *Excise Act 1901*;
- (b) goods that, under the regulations, are exempt from this section; or
- (c) goods to which section 128B applies.

“(4) The regulations may require a person who takes, or proposes to take, goods referred to in paragraph (3) (b) on board a ship or aircraft for use as ship's stores or aircraft's stores, as the case may be, to give in writing to a Collector, in accordance with the regulations, such information in respect of the goods as is prescribed.

Returns relating to ship's stores and aircraft's stores

“128B. (1) The Minister may, by notice in writing published in the *Gazette*, declare that goods, or goods included in a specified class of goods, owned by a specified person that are intended—

- (a) to be used as ship's stores; or
- (b) to be used as aircraft's stores,

are goods to which this section applies.

“(2) A person, being the owner of goods to which this section applies, shall, within 7 days after the expiration of a period approved by a Collector in writing in respect of the person for the purposes of this section, give to a Collector a return, in accordance with the 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, during the period, were taken on board a ship for use as ship's stores or taken on board an aircraft for use as aircraft's stores.

Penalty: \$1,000.

Authority for ship's stores or aircraft's stores to be given

“128C. (1) The owner of a ship shall not permit goods required to be entered for use as ship's stores to be taken on board the ship unless the goods have been so entered and authority given under section 39 to deal with the goods in accordance with the entry has been produced to the owner.

“(2) The owner of an aircraft shall not permit goods required to be entered for use as aircraft's stores to be taken on board the aircraft unless the goods have been so entered and authority given under section 39 to deal with the goods in accordance with the entry has been produced to the owner.

Penalty: \$1,000.”.

Ship's and aircraft's stores not to be taken on Board without approval

11. Section 129 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “prescribed” before “ship's stores” (wherever occurring);
- (b) by inserting in sub-section (1) “prescribed” before “aircraft's stores” (wherever occurring);
- (c) by omitting from sub-section (4) “Ship's stores” and substituting “Prescribed ship's stores”; and
- (d) by inserting in sub-section (4) “prescribed” before “aircraft's stores”.

12. Sections 130 and 130A of the Principal Act are repealed and the following section is substituted:

Certain ship's and aircraft's stores exempt from duty

“130. (1) The following goods are exempt from duty:

- (a) goods, other than controlled goods, that are ship's stores or aircraft's stores;
- (b) controlled goods that are ship's stores the supply of which to the passengers or crew of a ship, or for the service of a ship, has been approved in accordance with the regulations;
- (c) controlled goods that are aircraft's stores the supply of which to the passengers or crew of an aircraft, or for the service of an aircraft, has been approved in accordance with the regulations.

“(2) Without limiting the generality of the regulations that may be made for the purposes of paragraph (1) (b), those regulations may provide that approval shall not be given in accordance with the regulations for the supply of particular controlled goods on a ship on a voyage in a quantity that exceeds a quantity ascertained in accordance with a method set out in the regulations.

“(3) Without limiting the generality of the regulations that may be made for the purposes of paragraph (1) (c), those regulations may provide that approval shall not be given in accordance with the regulations for the supply of particular controlled goods on an aircraft on a flight in a quantity that exceeds a quantity ascertained in accordance with a method set out in the regulations.

“(4) Approval for the use by the passengers or crew of a ship or aircraft or for the service of a ship or aircraft of controlled goods that are ship’s stores or aircraft’s stores shall not be given otherwise than in accordance with regulations made for the purposes of sub-section (1) unless duty in respect of the goods has been paid or security for, or a guarantee of, payment of that duty has been given.

“(5) In this section, ‘controlled goods’ means—

- (a) goods declared by the regulations to be controlled goods for the purposes of this section; or
- (b) goods included in a class of goods declared by the regulations to be a class of controlled goods for the purposes of this section.”.

13. After section 164 of the Principal Act the following section is inserted:

Indexation of rate of rebate

“164A. (1) In this section, unless the contrary intention appears—

‘relevant excise rate’ means the rate of duty specified in paragraph 11 (E) (5) in the Schedule to the *Excise Tariff Act 1921*;

‘relevant rebate rate’ means the rate specified in the regulations made under this Act that is the rate prescribed by those regulations as the rate of rebate for the purposes of sub-section 164 (5).

“(2) Where by virtue of the operation of section 6A of the *Excise Tariff Act 1921*, that Act has effect as if for the relevant excise rate there were substituted, on a particular day, another rate of duty (in this sub-section referred to as the ‘substituted rate’), this Act has effect as if for the amount specified in the relevant rebate rate there were substituted on that day an amount that bears the same proportion to the amount specified in the substituted rate as the amount specified in the relevant rebate rate bears to the amount specified in the relevant excise rate.

“(3) Where, by virtue of the application of this section, this Act has effect as if, on a particular day, another amount were substituted for an amount specified in the relevant rebate rate, the Minister shall, on or as soon as practicable after that day, publish for the information of the public a notice in the *Gazette* advertising the rate as affected by the substitution.”.

Places set aside for purposes of Act

14. Section 234AA is amended by adding at the end the following sub-section:

“(2) Where a sign is displayed in relation to a place under sub-section (1), a Collector, or a person authorized by a Collector to do so, may cause signs to be displayed at or near the place that identify the place and state that the use of cameras or sound recorders at the place by unauthorized persons is prohibited by this Act.”.

Unauthorized entry to places and on ships, aircraft or wharves

15. Section 234A of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “section 234AA” and substituting “sub-section 234AA (1)”; and

- (b) by omitting from sub-section (3) "section 234AA" and substituting "sub-section 234AA (1)".

16. After section 234A of the Principal Act the following section is inserted:

Unauthorized use of cameras and sound recorders

"234AB. (1) An officer may direct a person, including a passenger disembarking from, or embarking on, a ship or aircraft—

- (a) not to operate a camera, or use an appliance to record or transmit sound, at a place in relation to which a sign is displayed under sub-section 234AA (2); or
- (b) not to operate a camera, or use an appliance to record or transmit sound, at a place (being a place that is part of a ship, of an aircraft or of a wharf) at a time when the personal baggage of passengers disembarking from, or embarking on, a ship or aircraft, is being examined, for the purposes of this Act, at or in the vicinity of that place.

"(2) Where an officer gives to a person a direction under sub-section (1), the officer shall inform that person that failure to comply with that direction is an offence under this Act.

"(3) A person shall not, without reasonable excuse, fail to comply with a direction given to that person by an officer in accordance with sub-section (1).

Penalty: \$1,000.

"(4) In any proceedings for the prosecution of a person for an offence against sub-section (3), evidence that a sign stating that the use of a camera or a sound recorder at a place is prohibited by this Act was displayed at or near that place is *prima facie* evidence that the sign was so displayed in accordance with sub-section 234AA (2).

"(5) In this section, 'camera' includes any device for making or transmitting, or designed for use in the making or transmission of, images of objects.

"(6) For the purposes of this section, a person shall be taken to use an appliance to transmit sound at a place if, and only if, the person uses the appliance to transmit sound, other than sound coming from the appliance, from the place to another place."

17. After section 256 of the Principal Act the following section is inserted:

Conduct by directors, servants or agents

"257. (1) Where, in a Customs prosecution in respect of any conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

“(2) Any conduct engaged in on behalf of a body corporate—

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

“(3) Where, in a Customs prosecution in respect of any conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

“(4) Any conduct engaged in on behalf of a person other than a body corporate—

- (a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

“(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for his or her intention, opinion, belief or purpose.”.

18. The heading to Part XV of the Principal Act is omitted and the following heading is substituted:

“PART XV—TENDERS FOR RIGHTS TO ENTER GOODS FOR HOME CONSUMPTION AT CONCESSIONAL RATES”.

Interpretation

19. Section 265 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “year”; and
- (b) by omitting sub-section (2).

Tender schemes

20. Section 266 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “import” and substituting “enter for home consumption during a period, or each of a number of periods,”; and
- (b) by omitting from sub-section (1) “during a year”.

Undertakings relating to tenders

21. (1) Section 267 of the Principal Act is amended by omitting from sub-section (1) “1966” and substituting “1982”.

(2) Section 267 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “import during a year” and substituting “enter for home consumption during a period, or each of a number of periods,”;
- (b) by omitting from sub-section (1) “his tender” (wherever occurring) and substituting “that tender”;
- (c) by omitting from paragraph (1) (b) “imported by that person during that year” and substituting “entered for home consumption by that person during that period, or each of those periods, as the case may be,”; and
- (d) by omitting from sub-section (1) all the words after paragraph (1) (b) and substituting the following:

“the person will, during that period, or each of those periods, as the case may be, 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, that quantity of those goods, or the quantity of those goods having that value.”.

Transfers of rights to enter goods for home consumption at concessional rates of duty

22. Section 268 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “import” and substituting “enter for home consumption during a period, or each of a number of periods,”;
- (b) by omitting from sub-section (1) “during a year”;
- (c) by omitting from sub-section (2) “import” (first occurring) and substituting “enter for home consumption”;
- (d) by omitting from paragraph (2) (a) “imported” and substituting “entered for home consumption”; and
- (e) by omitting from paragraph (2) (a) “import into Australia that quantity of those goods, or the quantity of those goods having that value, and enter them for home consumption” and substituting “enter for home consumption those goods, or the quantity of those goods having that value,”.

Revocation of concession orders

23. Section 269P of the Principal Act is amended—

(a) by inserting after sub-section (2) the following sub-sections:

“(2A) Where the Minister becomes satisfied that a concession order that is in force has become obsolete, the Minister may, by order in writing, revoke the concession order.

“(2B) Where the Minister becomes satisfied that, because of an amendment of a Customs Tariff or otherwise, a concession order was not, on and after a particular date (which may be the date on which the concession order came into effect) a concession order in respect of the particular goods in respect of which it was intended to make the concession order, the Minister may, by order in writing, revoke the concession order.

“(2C) A revocation under sub-section (2B) of a concession order comes into effect on the date specified in the order of revocation, not being a date earlier than the date of the making of the order.”;

(b) by inserting in sub-section (3) “, (2A) or (2B)” after “sub-section (1)”;

(c) by inserting in sub-section (4) “, (2A) or (2B)” after “sub-section (1)”;

(d) by inserting in sub-section (7) “, (2A) or (2B)” after “sub-section (1)”;

(e) by inserting in sub-section (8) “, (2A) or (2B)” after “sub-section (1)”;

(f) by inserting in sub-section (10) “prescribed” before “item”; and

(g) by adding at the end the following sub-section:

“(11) Where a concession order is revoked under sub-section (2B), the Minister shall make a written order declaring that particular goods, being the particular goods in respect of which it was intended to make the revoked concession order, are goods to which the prescribed item that was specified in the revoked concession order applies, and the order so made shall be deemed to be a concession order that came into effect on the earliest date on which the revoked concession order was not a concession order in respect of the particular goods in respect of which it was intended to make the revoked concession order, which date shall be specified in the order under this sub-section.”.

24. After section 273J of the Principal Act the following section is inserted:

Review of decisions relating to Customs Tariff (Stand-By Duty) Act

“273JA. (1) Applications may be made to the Administrative Appeals Tribunal for review of—

(a) a decision of the Minister for Resources and Energy that he or she is satisfied, or not satisfied, of a matter for the purposes of the definition of ‘list of eligible importers’ in sub-section 4 (1) of the *Customs Tariff (Stand-By Duty) Act 1985*;

- (b) a decision of that Minister under paragraph 10 (1) (b) of that Act that he or she is satisfied, or not satisfied, of a matter; or
- (c) a decision of that Minister under paragraph 11 (1) (b) of that Act that he or she is satisfied, or not satisfied, of a matter.

“(2) In this section, ‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.”.

Statement to accompany notification of decisions

25. Section 273K of the Principal Act is amended by inserting in sub-section (1) “or 273JA (1)” after “273J (1)”.

Saving

26. Notwithstanding the amendments of the Principal Act made by sections 18, 19, 20, 21 and 22, the Principal Act as in force immediately before the commencement of this section continues to apply in relation to a scheme formulated under sub-section 266 (1) of the Principal Act as in force before the commencement of this section that is a scheme a call for tenders under which was made before the commencement of this section.

PART III—AMENDMENT OF CUSTOMS AMENDMENT ACT 1979

Principal Act

27. The *Customs Amendment Act 1979*² is in this Part referred to as the Principal Act.

Interpretation

28. Section 3 of the Principal Act is amended by omitting from paragraph (c) “the definition of ‘Trafficable quantity’ ” and substituting “the definition of ‘Trafficable quantity’ ”.

PART IV—AMENDMENTS OF CUSTOMS AND EXCISE AMENDMENT ACT 1982

Principal Act

29. The *Customs and Excise Amendment Act 1982*³ is in this Part referred to as the Principal Act.

Authority for exportation for excisable goods to be given

30. Section 74 of the Principal Act is amended by omitting “inserting ‘section 61D and’ after ‘Subject to’ ” and substituting “by omitting ‘The owner’ and substituting ‘Subject to section 61D, the owner’ ”.

Schedule 1

31. Part 1 of Schedule 1 to the Principal Act is amended by omitting “\$500 (wherever occurring)” and substituting “\$500”.

PART V—AMENDMENTS OF EXCISE ACT 1901

Principal Act

32. The *Excise Act 1901*⁴ is in this Part referred to as the Principal Act.

Manufacturers to be licensed

33. Section 35 of the Principal Act is amended by omitting “No person shall” and substituting “Subject to the regulations, a person shall not”.

Entry for home consumption, &c.

34. Section 58 of the Principal Act is amended by adding at the end the following paragraphs:

“(d) Use as ship’s stores.

(e) Use as aircraft’s stores.”.

Authority for exportation of excisable goods to be given

35. Section 58B of the Principal Act is amended by omitting “Subject to sub-section 160A (2), the owner” and substituting “The owner”.

36. After section 58B of the Principal Act the following sections are inserted:

Returns relating to ship’s stores and aircraft’s stores

“58C. (1) The Minister may, by notice in writing published in the *Gazette*, declare that excisable goods, or excisable goods included in a specified class of excisable goods, manufactured or owned by a specified person that are intended to be used as ship’s stores are goods to which this sub-section applies.

“(2) The Minister may, by notice in writing published in the *Gazette*, declare that excisable goods or excisable goods included in a specified class of excisable goods, manufactured by a specified person that are intended to be used as aircraft’s stores are excisable goods to which this sub-section applies.

“(3) Excisable goods to which sub-section (1) applies may, without being entered, be removed to a ship for use as ship’s stores.

“(4) Excisable goods to which sub-section (2) applies may, without being entered, be removed to an aircraft for use as aircraft’s stores.

“(5) A person, being the manufacturer or owner of excisable goods to which sub-section (1) or (2) applies, shall, within 7 days after the expiration of a period approved by a Collector in writing in respect of the person for the purposes of this section, give 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 excisable goods to which sub-section (1) or (2) applies that, during the period, were taken on board a ship for use as ship’s stores or taken on board an aircraft for use as aircraft’s stores.

Penalty: \$1,000.

“(6) In this section, ‘aircraft’s stores’ and ‘ship’s stores’ have the same meanings respectively as they have in Part XIV.

Authority for ship’s stores or aircraft’s stores to be given

“58D. (1) The owner of a ship shall not permit excisable goods, other than excisable goods to which sub-section 58C (1) applies, to be taken on board the ship for use as ship’s stores unless the goods have been entered for use as ship’s stores and the entry has been passed.

Penalty: \$1,000.

“(2) The owner of an aircraft shall not permit excisable goods, other than excisable goods to which sub-section 58C (2) applies, to be taken on board the aircraft for use as aircraft’s stores unless the goods have been entered for use as aircraft’s stores and the entry has been passed.

Penalty: \$1,000.

“(3) In this section, ‘aircraft’s stores’ and ‘ship’s stores’ have the same meanings respectively as they have in Part XIV.

Permission to deliver prescribed goods for home consumption without entry

“58E. (1) A Collector may approve the delivery for home consumption, without entry, of prescribed goods that are subject to the control of the Customs, and goods so approved may be delivered for home consumption notwithstanding that an entry of the goods for home consumption has not been made under this Act.

“(2) Prescribed goods of a particular kind that are delivered for home consumption by authority of sub-section (1) shall, for the purposes of this Act, be deemed to be entered for home consumption on the day declared by the regulations to be the day on which prescribed goods of that kind delivered for home consumption by authority of that sub-section are to be deemed to be entered for home consumption.

“(3) In this section, ‘prescribed goods’ means—

- (a) excisable goods included in a class of excisable goods declared by the regulations to be prescribed goods for the purposes of this section; or
- (b) excisable goods the quantity of which does not exceed the quantity declared by the regulations to be the relevant quantity relating to those goods for the purposes of this section.”.

37. After section 78A of the Principal Act the following section is inserted:

Indexation of rate of rebate

“78B. (1) In this section, unless the contrary intention appears—

‘relevant excise rate’ means the rate of duty specified in paragraph 11 (E) (5) in the Schedule to the *Excise Tariff Act 1921*;

‘relevant rebate rate’ means the rate specified in the regulations made under this Act that is the rate prescribed by those regulations as the rate of rebate for the purposes of sub-section 78A (5).

“(2) Where by virtue of the operation of section 6A of the *Excise Tariff Act 1921*, that Act has effect as if for the relevant excise rate there were substituted, on a particular day, another rate of duty (in this sub-section referred to as the ‘substituted rate’), this Act has effect as if for the amount specified in the relevant rebate rate there were substituted on that day an amount that bears the same proportion to the amount specified in the substituted rate as the amount specified in the relevant rebate rate bears to the amount specified in the relevant excise rate.

“(3) Where, by virtue of the application of this section, this Act has effect as if, on a particular day, another amount were substituted for an amount specified in the relevant rebate rate, the Minister shall, on or as soon as practicable after that day, publish for the information of the public a notice in the *Gazette* advertising the rate as affected by the substitution.”.

38. After section 80 of the Principal Act the following section is inserted in Part VIII:

Certain interest not payable

“81. (1) Notwithstanding section 154, where, because of an amendment of the *Excise Tariff Act 1921*, an amount paid by way of Excise duty is repayable to a person, interest on that amount is not payable by the Commonwealth to that person.

“(2) Nothing in sub-section (1) shall be taken as implying that, before the commencement of this section, where an amendment of the *Excise Tariff Act 1921* resulted in a person becoming entitled to the repayment of an amount paid by way of Excise duty, interest on that amount was payable by the Commonwealth to that person.”.

39. Sections 134, 134A and 135 of the Principal Act are repealed and the following section is substituted:

Institution of prosecutions

“134. (1) Excise prosecutions may be instituted in the name of the Comptroller by action, information or other appropriate proceeding—

- (a) in the Supreme Court of a State;
- (b) in the Supreme Court of the Australian Capital Territory;
- (c) in the Supreme Court of the Northern Territory;
- (d) in a County Court or District Court of a State; or
- (e) in a Local Court, being a Local Court of full jurisdiction, of South Australia or of the Northern Territory.

“(2) Where an Excise prosecution for a pecuniary penalty that, but for this section, would exceed \$20,000 is instituted in a Court referred to in paragraph (1) (d) or (e), the amount of that penalty that exceeds \$20,000 shall be taken to have been abandoned.

“(3) Excise prosecutions may be instituted in the name of a Collector by action, information or other appropriate proceedings in a court of summary

jurisdiction of a State, of the Australian Capital Territory or of the Northern Territory.

“(4) Where a Customs prosecution for a pecuniary penalty that, but for this sub-section, would exceed \$5,000 is instituted in a Court referred to in sub-section (3), the amount of that penalty that exceeds \$5,000 shall be taken to have been abandoned.”.

Prosecution in accordance with practice rules

40. Section 136 of the Principal Act is amended—

- (a) by omitting “Supreme Court” and substituting “court referred to in sub-section 134 (1)”; and
- (b) by inserting “(if any)” after “rules of practice”.

Information, &c., to be valid, &c., if in words of Act

41. Section 139 of the Principal Act is amended by inserting “other originating processes” after “summonses”.

No objections for informality

42. Section 140 of the Principal Act is amended by omitting “or summons” (wherever occurring) and substituting “, summons or other originating process”.

43. After section 145 of the Principal Act the following section is inserted:

Conduct by directors, servants or agents

“145A. (1) Where, in an Excise prosecution in respect of any conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

“(2) Any conduct engaged in on behalf of a body corporate—

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

“(3) Where, in an Excise prosecution in respect of any conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

“(4) Any conduct engaged in on behalf of a person other than a body corporate—

- (a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

“(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for his or her intention, opinion, belief or purpose.”.

Ship’s stores and aircraft’s stores

44. Section 160A of the Principal Act is amended—

- (a) by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) The following goods are exempt from duty:

- (a) goods, other than controlled goods, that are ship’s stores or aircraft’s stores;
- (b) controlled goods that are ship’s stores the supply of which to the passengers or crew of a ship, or for the service of a ship, has been approved in accordance with the regulations;
- (c) controlled goods that are aircraft’s stores the supply of which to the passengers or crew of an aircraft, or for the service of an aircraft, has been approved in accordance with the regulations.

“(2) Without limiting the generality of the regulations that may be made for the purposes of paragraph (1) (b), those regulations may provide that approval shall not be given in accordance with the regulations for the supply of particular controlled goods on a ship on a voyage in a quantity that exceeds a quantity ascertained in accordance with a method specified in the regulations.

“(2A) Without limiting the generality of the regulations that may be made for the purposes of paragraph (1) (c), those regulations may provide that approval shall not be given in accordance with the regulations for the supply of particular controlled goods on an aircraft on a flight in a quantity that exceeds a quantity ascertained in accordance with a method specified in the regulations.

“(2B) Approval for the use by the passengers or crew of a ship or aircraft or for the service of a ship or aircraft of controlled goods that are ship’s stores or aircraft’s stores shall not be given otherwise than in accordance with the regulations made for the purposes of sub-section

- (1) unless duty in respect of the goods has been paid or security for, or a guarantee of, payment of that duty has been given.”; and
- (b) by inserting after sub-section (4) the following sub-section:
 - “(4A) In this section, ‘controlled goods’ means—
 - (a) goods declared by the regulations to be controlled goods for the purposes of this section; or
 - (b) goods included in a class of goods declared by the regulations to be a class of controlled goods for the purposes of this section.”.

Interpretation

- 45.** Section 163A of the Principal Act is amended—
 - (a) by inserting after the definition of “proposed item of an Excise Tariff” in sub-section (1) the following definition:
 - “ ‘proposed section of an Excise Tariff’ means—
 - (a) a section in an Excise Tariff proposed in the Parliament; or
 - (b) a section in an Excise Tariff as proposed to be altered by an Excise Tariff alteration proposed in the Parliament.”; and
 - (b) by adding at the end the following sub-section:
 - “(3) Unless the contrary intention appears, a reference in this Part to a section in an Excise Tariff shall be read as including a reference to a sub-section of such a section, a paragraph of such a section or sub-section, a sub-paragraph of such a paragraph and a sub-sub-paragraph of such a sub-paragraph.”.

Minister may make by-laws

- 46.** Section 165 of the Principal Act is amended by adding at the end the following sub-section:
 - “(2) Where in a section of an Excise Tariff, or a proposed section of an Excise Tariff, any matter or thing is expressed to be as prescribed, defined or declared by by-law, the Minister may, subject to this Part, make by-laws for the purposes of that section or proposed section.”.

Amendments of Principal Act relating to offences

- 47.** The Principal Act is amended as set out in Schedule 1.

Application

- 48. (1)** The amendments made by section 48, other than the amendments in sections 118 and 124 of the Principal Act, do not apply in relation to offences committed before the commencement of section 48.
- (2)** In the application of section 124 of the Principal Act as amended by this Act to offences committed before the commencement of section 48, the

words “or both” in paragraph (1) (e) of that section as so amended shall be taken to be omitted.

PART VI—AMENDMENTS OF COAL EXCISE ACT 1949

Principal Act

49. The *Coal Excise Act 1949*⁵ is in this Part referred to as the Principal Act.

Amendments of Principal Act relating to penalties

50. (1) The Principal Act is amended as set out in Schedule 2.

(2) The amendments made by this section do not apply in relation to offences committed before the commencement of this section.

PART VII—AMENDMENTS OF DISTILLATION ACT 1901

Principal Act

51. The *Distillation Act 1901*⁶ is in this Part referred to as the Principal Act.

Amendments of Principal Act relating to penalties

52. (1) The Principal Act is amended as set out in Schedule 3.

(2) The amendments made by this section do not apply in relation to offences committed before the commencement of this section.

PART VIII—AMENDMENTS OF SPIRITS ACT 1906

Principal Act

53. The *Spirits Act 1906*⁷ is in this Part referred to as the Principal Act.

Amendments of Principal Act relating to penalties

54. (1) The Principal Act is amended as set out in Schedule 4.

(2) The amendments made by this section do not apply in relation to offences committed before the commencement of this section.

SCHEDULE 1

Section 47

**AMENDMENTS OF THE EXCISE ACT 1901
RELATING TO OFFENCES**

Section 25—

Omit “\$40”, substitute “\$5,000”.

Section 27—

Omit “\$40”, substitute “\$5,000”.

Section 29—

Omit “\$40”, substitute “\$5,000”.

Section 30—

Omit “\$40”, substitute “\$5,000”.

Section 33—

Omit “\$40”, substitute “\$2,000”.

Section 35—

Omit “\$200”, substitute “\$5,000”.

Section 45—

Omit “\$200”, substitute “\$5,000”.

Section 47—

Omit “\$100”, substitute “\$1,000”.

Section 49—

Omit “\$100”, substitute “\$1,000”.

Sub-section 50 (1)—

Omit “\$250”, substitute “\$2,000”.

Section 51—

Omit “\$100”, substitute “\$1,000”.

Section 52—

Omit “\$100”, substitute “\$1,000”.

Sub-section 58A (3)—

Omit “Penalty: \$700”, substitute “Penalty for contravention of this sub-section: \$1,000”.

Section 58B—

Omit “\$500”, substitute “\$1,000”.

Section 61—

Omit “\$1,000”, substitute “\$20,000”.

SCHEDULE 1—continued

Paragraph 61A (4) (a)—

Omit “\$1,000”, substitute “\$20,000”.

Paragraph 61C (4) (a)—

Omit “\$1,000”, substitute “\$20,000”.

Section 70—

Omit “\$100”, substitute “\$1,000”.

Section 76—

Omit “\$100”, substitute “\$1,000”.

Section 77C—

Omit “\$100”, substitute “\$1,000”.

Section 77E—

Omit “\$200”, substitute “\$5,000”.

Section 90—

Omit “\$100”, substitute “\$1,000”.

Section 92—

Omit “\$100”, substitute “\$5,000”.

Section 94—

Omit “\$40”, substitute “\$1,000”.

Section 107—

Omit “\$40”, substitute “\$1,000”.

Section 117—

(a) Omit “Penalty: \$100.”.

(b) Add at the end the following sub-section:

“(2) A person who contravenes sub-section (1) is guilty of an offence punishable upon conviction as provided by section 129.”.

Section 118—

Omit “shall be guilty of an indictable offence and shall be liable to imprisonment with or without hard labour for any term not exceeding 5 years”, substitute “is guilty of an offence punishable on conviction by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both”.

Section 119—

(a) Omit “Penalty: \$200.”.

(b) Add at the end the following sub-section:

“(2) A person who contravenes sub-section (1) is guilty of an offence punishable upon conviction as provided by section 129.”.

Section 120—

(a) Omit “No person shall”, substitute “A person shall not”.

(b) Omit “Penalty: \$200.”.

SCHEDULE 1—continued

(c) Add at the end the following sub-section:

“(2) A person who contravenes sub-section (1) is guilty of an offence punishable upon conviction—

- (a) in the case of an offence against paragraph (1) (i), (ii), (iii), (iiia) or (ix), by a fine not exceeding \$1,000;
- (b) in the case of an offence against paragraph (1) (iv), by—
 - (i) where the Court can determine the amount of the duty on goods the payment of which would have been evaded by the commission of the offence if the goods had been entered for home consumption on—
 - (A) where the date on which the offence was committed—that date; or
 - (B) where that date is not known to the Court—the date on which the prosecution for the offence was instituted,
 - a fine not exceeding 5 times the amount of that duty and not less than 2 times that amount; or
 - (ii) where the Court cannot determine the amount of that duty, a fine not exceeding \$50,000;
- (c) in the case of an offence against paragraph (1) (v), (va) or (vb), by a fine not exceeding 5 times the amount of the drawback, refund or rebate that was obtained by the commission of the offence and not less than 2 times that amount; or
- (d) in the case of an offence against paragraph (1) (vi), (vii) or (viii), by a fine not exceeding \$5,000.”.

Section 120A—

Omit “\$200”, substitute “\$5,000”.

Section 121—

Repeal the section.

Section 122—

Repeal the section.

Section 124—

- (a) Omit paragraph (b).
- (b) Omit “shall be guilty of an indictable offence and shall be liable to imprisonment with or without hard labour for any term not exceeding 5 years”, substitute:

“is guilty of an offence punishable on conviction—

 - (e) in the case of an offence against paragraph (a), by a fine not exceeding \$20,000 or imprisonment for a period not exceeding 5 years, or both;
 - (f) in the case of an offence against paragraph (c), by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
 - (g) in the case of an offence against paragraph (d), by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.”.
- (c) Add at the end the following sub-section:

“(2) Notwithstanding that an offence against paragraph (1) (c) is an indictable offence, a Court of summary jurisdiction may hear and determine proceedings in respect of such an offence but, where such a Court convicts a person of such an offence, the penalty that the Court may impose is a fine not exceeding \$2,000 or imprisonment for a term not exceeding one year, or both.”.

SCHEDULE 1—continued

Section 125—

Repeal the section.

Section 129—

Repeal the section, substitute the following section:

Penalties for offences against sections 117 and 119

“129. Where an offence is punishable as provided by this sub-section, the penalty applicable to the offence is—

- (a) where the Court can determine the amount of the duty that would have been payable on the goods to which the offence relates if those goods had been entered for home consumption on—
 - (i) where the date on which the offence was committed is known to the Court—that date; or
 - (ii) where that date is not known to the Court—the date on which the prosecution for the offence was instituted,a fine not exceeding 5 times the amount of that duty and not less than 2 times that amount; or
- (b) where the Court cannot determine the amount of that duty, a fine not exceeding \$50,000.”.

Section 130—

Repeal the section.

Section 131—

Repeal the section.

Section 132—

Repeal the section.

SCHEDULE 2

Sub-section 50 (1)

**AMENDMENTS OF THE COAL EXCISE ACT 1949
RELATING TO PENALTIES**

Section 7—

Omit “\$200”, substitute “\$5,000”.

Section 18—

Omit “\$200”, substitute “\$5,000”.

Section 20—

Omit “\$40”, substitute “\$1,000”.

Section 21—

Omit “\$40”, substitute “\$1,000”.

Section 22—

Omit “\$100”, substitute “\$2,000”.

SCHEDULE 2—continued

Sub-section 24 (1)—

Omit “\$200”, substitute “\$5,000”.

SCHEDULE 3

Sub-section 52 (1)

**AMENDMENTS OF THE DISTILLATION ACT 1901
RELATING TO PENALTIES**

Section 10—

Omit “\$200”, substitute “\$5,000”.

Section 12—

Omit “\$1,000”, substitute “\$5,000”.

Section 30—

Omit “\$100”, substitute “\$1,000”.

Section 31—

Omit “\$200”, substitute “\$1,000”.

Section 33—

Omit “\$200”, substitute “\$5,000”.

Section 34—

Omit “\$1,000”, substitute “\$5,000”.

Section 35—

Omit “\$200”, substitute “\$20,000”.

Section 36—

Omit “\$200”, substitute “\$1,000”.

Section 54—

Omit “\$200”, substitute “\$1,000”.

Section 56—

Omit “\$40”, substitute “\$1,000”.

Section 57—

Omit “\$1,000”, substitute “\$20,000”.

Section 58—

Omit “\$40”, substitute “\$1,000”.

Section 59—

Omit “\$40”, substitute “\$1,000”.

Section 62—

Omit “\$200”, substitute “\$1,000”.

SCHEDULE 3—continued

Section 67—

Omit “\$40”, substitute “\$1,000”.

Section 69—

Omit “\$200”, substitute “\$5,000”.

Section 71—

Omit “\$40”, substitute “\$1,000”.

Sub-section 73A (1)—

Omit “\$1,000”, substitute “\$5,000”.

Sub-section 73A (2)—

Omit “\$1,000”, substitute “\$5,000”.

Section 74—

Omit “\$1,000”, substitute “\$5,000”.

Section 76—

Omit “\$100”, substitute “\$5,000”.

Section 77—

Omit “\$200”, substitute “\$1,000”.

Section 77A—

Omit “\$1,000”, substitute “\$5,000”.

Section 78—

Repeal the section.

SCHEDULE 4

Sub-section 54 (1)

**AMENDMENTS OF THE SPIRITS ACT 1906
RELATING TO PENALTIES**

Sub-section 8 (1)—

Omit “Two hundred dollars”, substitute “\$1,000”.

Section 9—

Omit “One hundred dollars”, substitute “\$1,000”.

Section 15—

Omit “One thousand dollars”, substitute “\$5,000”.

Sub-section 16 (1)—

Omit “\$200”, substitute “\$5,000”.

Section 21—

Omit “One hundred dollars”, substitute “\$5,000”.

SCHEDULE 4—continued

Section 23—

Omit “Forty dollars”, substitute “\$1,000”.

NOTES

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; Nos. 13, 15 and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; and Nos. 2, 22, 63, 72 and 165, 1984.
 2. No. 92, 1979.
 3. No. 81, 1982.
 4. No. 9, 1901, as amended. For previous amendments, see No. 26, 1918; No. 8, 1923; No. 44, 1934; No. 16, 1942; No. 88, 1947; No. 46, 1949; No. 55, 1952; No. 10, 1957; No. 49, 1958; No. 37, 1962; No. 49, 1963; No. 139, 1965; No. 93, 1966; Nos. 15 and 105, 1968; No. 23, 1972; Nos. 24 and 145, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 29, 1974; No. 91, 1976; No. 110, 1978; Nos. 11 and 50, 1979; No. 42, 1980; Nos. 61 and 65, 1981; Nos. 51, 80 and 108, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 39 and 101, 1983; and Nos. 72 and 165, 1984.
 5. No. 81, 1949, as amended. For previous amendments, see No. 19, 1961; No. 93, 1966; Nos. 18 and 76, 1968; No. 216, 1973; No. 37, 1976; and No. 19, 1981.
 6. No. 8, 1901, as amended. For previous amendments, see No. 21, 1906; No. 34, 1918; No. 9, 1923; No. 13, 1925; No. 3, 1931; No. 8, 1934; No. 86, 1947; No. 80, 1950; No. 54, 1952; No. 55, 1954; No. 74, 1956; No. 93, 1966; Nos. 16 and 106, 1968; No. 24, 1972; No. 216, 1973; No. 37, 1976; No. 36, 1978; No. 56, 1980; No. 61, 1981; and No. 27, 1984.
 7. No. 21, 1906, as amended. For previous amendments, see No. 14, 1915; No. 35, 1918; No. 6, 1923; No. 12, 1932; No. 24, 1935; No. 87, 1947; No. 10, 1952; No. 93, 1966; No. 110, 1968; No. 6, 1969; No. 25, 1972; No. 216, 1973; No. 37, 1976; No. 61, 1981; and No. 72, 1984.
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*[Minister's second reading speech made in—
House of Representatives on 23 April 1985
Senate on 14 May 1985]*