



Customs Legislation Amendment Act (No. 1) 1999

No. 137, 1999

**An Act to amend legislation relating to Customs,
and for related purposes**

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An Act to amend legislation relating to Customs, and for related purposes

[Assented to 3 November 1999]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Legislation Amendment Act (No. 1) 1999*.

2 Commencement

- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

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- (2) The items of Schedules 1 and 2 commence on a day or days to be fixed by Proclamation.
 - (3) If an item to which subsection (2) applies does not commence within 6 months after the day on which this Act receives the Royal Assent, that item commences on the first day after the end of that period.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Customs Act 1901

1 Subsection 4(1) (paragraph (b) of the definition of *Australian seabed*)

Repeal the paragraph, substitute:

- (b) part of:
 - (i) the seabed beneath the coastal area; or
 - (ii) the continental shelf of Australia.

2 Subsection 4(1)

Insert:

contiguous zone, in relation to Australia, means the contiguous zone within the meaning of the *Seas and Submerged Lands Act 1973*, adjacent to the coast of Australia.

3 Subsection 4(1)

Insert:

designated place means:

- (a) a port, airport or wharf that is appointed, and the limits of which are fixed, under section 15; or
- (b) a place that is the subject of a permission under subsection 58(2) while the ship or aircraft to which the permission relates remains at that place; or
- (c) a boarding station that is appointed under section 15; or
- (d) a place from which a ship or aircraft that is the subject of a permission under section 175 is required to depart, between the grant of that permission and the departure of the ship or aircraft; or
- (e) a place to which a ship or aircraft that is the subject of a permission under section 175 is required to return, while that ship or aircraft remains at that place; or
- (f) a section 234AA place that is not a place, or a part of a place, referred to in paragraph (a), (b), (c), (d) or (e).

4 Subsection 4(1) (definition of *Documents*)

Repeal the definition, substitute:

documents include:

- (a) any paper or other material on which there is writing; and
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) any paper or other material on which a photographic image or any other image is recorded; and
- (d) any article or material from which sounds, images or writing is capable of being produced with or without the aid of a computer or of some other device.

5 Subsection 4(1) (definition of *External search*)

Omit “or in the possession of”.

6 Subsection 4(1) (paragraph (c) of the definition of *Frisk search*)

Repeal the paragraph, substitute:

- (c) determine whether:
 - (i) if the search is conducted in circumstances described in subsection 219L(1) or (1A)—the person is unlawfully carrying any prohibited goods; and
 - (ii) if the search is conducted in circumstances described in subsection 219L(1B)—the person is carrying any weapon or thing capable of being used to inflict bodily injury on a person conducting a search under Division 1 of Part XII; and

7 Subsection 4(1) (definition of *Goods*)

Repeal the definition, substitute:

goods means movable personal property of any kind and, without limiting the generality of the expression, includes documents, vessels and aircraft.

8 Subsection 4(1)

Insert:

section 234AA place means a place that is identified under section 234AA as a place of a kind referred to in that section.

9 Subsection 4(1)

Insert:

territorial sea, in relation to Australia, means the territorial sea area whose outer limits are from time to time specified in a Proclamation made by the Governor-General for the purposes of section 7 of the *Seas and Submerged Lands Act 1973*.

10 Subsection 4(19)

Repeal the subsection, substitute:

(19) For the purposes of Part XII, a person will be taken to carry a thing, including a thing constituting or containing special forfeited goods or prohibited goods, on his or her body only if the thing constitutes, or is in or under, clothing worn by the person.

(19A) In subsection (19), the reference to clothing worn by a person includes a reference to any personal accessory or device that is worn by, or attached to, the person.

11 Paragraph 4(20)(a)

Omit “17 years”, substitute “18 years”.

12 Subsections 5B(1), (2) and (4) and paragraph (5)(b)

Insert “an adjacent area or” before “a coastal area” (wherever occurring).

13 Section 32

Repeal the section.

14 Subsection 58A(1)

Omit “sea”.

15 Paragraph 58A(2)(a)

Repeal the paragraph, substitute:

(a) travels from an external place to:

-
- (i) a sea installation installed in an adjacent area or in a coastal area; or
 - (ii) a resources installation attached to the Australian seabed;
- whether or not in the course of a longer journey; and

16 Paragraph 58A(3)(a)

Repeal the paragraph, substitute:

- (a) are brought from an external place to:
 - (i) a sea installation installed in an adjacent area or in a coastal area; or
 - (ii) a resources installation attached to the Australian seabed;
- whether or not previously brought to that place from another place; and

17 Paragraph 58A(4)(a)

Repeal the paragraph, substitute:

- (a) travels from:
 - (i) a sea installation installed in an adjacent area or in a coastal area; or
 - (ii) a resources installation attached to the Australian seabed;
- whether or not in the course of a longer journey; and

18 Paragraph 58A(5)(a)

Repeal the paragraph, substitute:

- (a) are sent from:
 - (i) a sea installation installed in an adjacent area or in a coastal area; or
 - (ii) a resources installation attached to the Australian seabed;
- whether or not the goods are sent on from that place; and

Note: The heading to section 58A is altered by omitting “sea”.

19 Subsections 58A(6) and (8)

Omit “a sea” (wherever occurring), substitute “an”.

20 Subsection 59(1)

Omit all the words after paragraph (1)(a), substitute:

(b) any ship within:

- (i) waters of the sea within the outer limits of the territorial sea of Australia, including such waters within the limits of a State or an internal Territory; or
- (ii) the contiguous zone of Australia; or
- (iii) 500 metres of an Australian resources installation or an Australian sea installation;

to permit the master's ship to be boarded for the purposes of this Act.

Note: So far as concerns the boarding of ships in the contiguous zone of Australia (other than Australian ships), this subsection is limited by subsection (5A).

21 Subsection 59(2)

Omit all the words after paragraph (2)(a), substitute:

(b) any ship within:

- (i) waters of the sea within the outer limits of the territorial sea of Australia, including such waters within the limits of a State or an internal Territory; or
- (ii) the contiguous zone of Australia; or
- (iii) 500 metres of an Australian resources installation or an Australian sea installation;

to permit the master's ship to be boarded for the purposes of this Act.

Note: So far as concerns the boarding of ships in the contiguous zone of Australia (other than Australian ships), this subsection is limited by subsection (5A).

22 Subsection 59(3)

Omit "of him".

23 Subparagraphs 59(4)(b)(ii) and (iia)

Repeal the subparagraphs, substitute:

- (ii) waters of the sea within the outer limits of the territorial sea of Australia; or

24 Subsection 59(5)

Omit “of him”.

25 After subsection 59(5)

Insert:

- (5A) The person in command of the ship or aircraft first-mentioned in subsection (1) or (2) must not request the master of a ship (other than an Australian ship) in the contiguous zone (*contiguous zone ship*) to permit the contiguous zone ship to be boarded unless the first-mentioned person has reasonable grounds to suspect that the contiguous zone ship:
- (a) has been or is being used, or has been or is otherwise involved, in the commission of an offence against this Act; or
 - (b) is about to be so used or to be otherwise so involved.

26 Subsection 73(1)

Omit “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”, substitute “waters of the sea within the outer limits of the territorial sea of Australia, including such waters within the limits of a State or an internal Territory”.

27 At the end of paragraph 73(2)(a)

Add “or”.

28 Paragraphs 73(2)(b) and (c)

Repeal the paragraphs, substitute:

- (b) in, or flying over, waters of the sea within the outer limits of the territorial sea of Australia.

29 Subsection 175(1)

Insert:

Australian aircraft has the same meaning as in the *Civil Aviation Act 1988*.

30 Subsection 175(1)

Insert:

Australian ship has the same meaning as in the *Shipping Registration Act 1981*.

31 Subsection 175(1)

Insert:

coastal aircraft means an aircraft that is not currently engaged in making:

- (a) an international flight; or
- (b) a prescribed flight.

32 Subsection 175(1)

Insert:

coastal ship means a ship that is not currently engaged in making:

- (a) an international voyage; or
- (b) a prescribed voyage.

33 Subsection 175(1) (definition of *prescribed aircraft*)

Repeal the definition.

34 Subsection 175(1) (definition of *prescribed ship*)

Repeal the definition.

35 Subsection 175(1) (definition of *prescribed voyage*)

Repeal the definition, substitute:

prescribed voyage, in relation to a ship, means a voyage in the course of which the ship:

- (a) travels between places outside Australia; or
- (b) travels from a place outside Australia and returns to that place;

and does not call at a place in Australia.

36 Subsection 175(2)

Omit “prescribed ship shall not allow any goods to be transferred between the prescribed ship”, substitute “coastal ship must not allow any goods to be transferred between the coastal ship”.

37 Subsection 175(2) (penalty)

Omit “\$25,000”, substitute “250 penalty units”.

38 Subsection 175(3)

Omit “prescribed aircraft shall not allow any goods to be transferred between the prescribed aircraft”, substitute “coastal aircraft must not allow any goods to be transferred between the coastal aircraft”.

39 Subsection 175(3) (penalty)

Omit “\$25,000”, substitute “250 penalty units”.

40 After subsection 175(3)

Insert:

(3A) Except with the permission of a Collector or for the purpose of securing the safety of a ship or an aircraft or saving life, a person who is:

(a) the owner or master of an Australian ship that is currently engaged in making an international voyage or a prescribed voyage; or

(b) the owner or pilot of an Australian aircraft that is currently engaged in making an international flight or prescribed flight;

must not allow any goods to be transferred between that ship or aircraft and:

(c) a coastal ship; or

(d) a coastal aircraft.

Penalty: 250 penalty units.

(3B) Except with the permission of a Collector or for the purpose of securing the safety of a ship or an aircraft or saving life, a person who is:

(a) the owner or master of a ship (other than an Australian ship) that is currently engaged in making an international voyage or a prescribed voyage; or

(b) the owner or pilot of an aircraft (other than an Australian aircraft) that is currently engaged in making an international flight or a prescribed flight;

must not allow any goods to be transferred between that ship or aircraft and a coastal ship or coastal aircraft if the transfer takes place in, or in the airspace above (as the case may be), the waters of the sea within:

- (c) the outer limits of the territorial sea of Australia, including such waters within the limits of a State or an internal Territory; or
- (d) 500 metres of an Australian resources installation or an Australian sea installation.

Penalty: 250 penalty units.

(3C) For the purposes of this section, a reference to the permission of a Collector in subsection (2), (3), (3A) or (3B) is a reference to a permission of the Collector given to:

- (a) in the case of subsection (2)—the owner or master of the coastal ship referred to in that subsection; and
- (b) in the case of subsection (3)—the owner or pilot of the coastal aircraft referred to in that subsection; and
- (c) in the case of subsection (3A) or (3B)—the owner or master of the coastal ship referred to in that subsection or the owner or pilot of the coastal aircraft referred to in that subsection (as the case requires).

41 Subsection 175(4)

Omit “or (3)”, substitute “, (3), (3A) or (3B)”.

42 Subsection 175(7)

Omit “\$10,000”, substitute “100 penalty units”.

43 Subsection 183UA(1) (paragraph (b) of the definition of *container*)

Repeal the paragraph, substitute:

- (b) any baggage; and
- (c) any other thing that is or could be used for the carriage of goods, whether or not designed for that purpose.

44 Subsection 183UA(1) (at the end of the definition of *Customs place*)

Add:

- ; or (g) a place from which a ship or aircraft that is the subject of a permission under section 175 is required to depart, between the grant of that permission and the departure of the ship or aircraft; or
- (h) a place to which a ship or aircraft that is the subject of a permission under section 175 is required to return, while that ship or aircraft remains at that place; or
- (i) a section 234AA place that is not a place, or a part of a place, referred to in paragraph (aa), (a), (b), (c), (d), (g) or (h).

45 Subsection 183UA(1)

Insert:

designated container means a container referred to in paragraph (c) of the definition of *container*.

46 After subsection 185(2)

Insert:

- (2A) Any exercise of the power of arrest referred to in subsection (2) in the contiguous zone in relation to Australia is subject to the obligations of Australia under international law, including obligations under any treaty or convention or other agreement between Australia and another country or other countries.

47 Section 186

Omit “open packages and examine weigh mark and seal”, substitute “, subject to subsections (2) and (3), examine”.

48 At the end of section 186

Add:

- (2) In the exercise of the power to examine goods, the officer of Customs may do, or arrange for another officer of Customs or other person having the necessary experience to do, whatever is reasonably necessary to permit the examination of the goods concerned.
- (3) Without limiting the generality of subsection (2), examples of what may be done in the examination of goods include the following:

-
- (a) opening any package in which goods are or may be contained;
 - (b) using a device, such as an X-ray machine or ion scanning equipment, on the goods;
 - (c) testing or analysing the goods;
 - (d) measuring or counting the goods;
 - (e) if the goods are a document—reading the document either directly or with the use of an electronic device;
 - (f) using dogs to assist in examining the goods.

Note: The heading to section 186 is replaced by the heading “**General powers of examination of goods subject to Customs control**”.

186A Power to make copies of, and take extracts from, documents in certain circumstances

- (1) If:
 - (a) a document is examined under section 186; and
 - (b) as a result of that examination, an officer of Customs is satisfied that the document or part of the document may contain information relevant to an importation or exportation, or to a proposed importation or exportation, of prohibited goods;the officer of Customs may make a copy of, or take an extract from, the document, or arrange for another officer of Customs or other person having the necessary experience, to make such a copy or take such an extract.
- (2) Without limiting the generality of subsection (1), a copy may be made of, or an extract taken from, a document:
 - (a) by photocopying the document or a part of the document; or
 - (b) by photographing the document or a part of the document; or
 - (c) by electronically scanning the document or a part of the document; or
 - (d) by making an electronic copy of information contained in the document or a part of the document; or
 - (e) by making a written copy of information contained in the document or a part of the document.

186B Compensation for damage caused by copying

- (1) If an activity undertaken in relation to the copying of a document, or the taking of an extract from a document, causes its loss or destruction or causes damage to the document, and the loss or destruction or the damage occurred wholly or partly as a result of:
 - (a) insufficient care being exercised in selecting the person to undertake the activity; or
 - (b) insufficient care being exercised by the person undertaking the activity;compensation for the damage is payable to the owner of the documents concerned.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In this section, a reference either to the loss or destruction of a document, or to damage to a document, includes a reference to the erasure or addition of electronic data or the corruption of such data.

49 At the end of section 197

Add:

- (6) A person in charge of a conveyance is guilty of an offence if:
 - (a) the conveyance is about to leave a Customs place; and
 - (b) an officer of Customs requires the conveyance to stop; and
 - (c) the person does not stop the conveyance as so required.

Penalty: 45 penalty units.

- (7) This offence is an offence of strict liability.

50 Subsection 203B(1)

Repeal the subsection, substitute:

- (1) This section applies in 2 circumstances, namely:
 - (a) in a circumstance where an authorised person suspects on reasonable grounds that there are special forfeited goods:
 - (i) at, or in a container (other than a designated container in the immediate physical possession of a person to whom subparagraph (b)(i) applies) at, a Customs place; or

-
- (ii) in, on, or in a container (other than a designated container in the immediate physical possession of a person to whom subparagraph (b)(i) applies) on, a conveyance at a Customs place; or
 - (b) in a circumstance where a person:
 - (i) is at a Customs place that is also a designated place; and
 - (ii) has a designated container, or has goods reasonably suspected by an authorised person to be special forfeited goods, in his or her immediate physical possession; but
 - (iii) is not carrying that container or those goods on his or her body.

51 Subsection 203B(1) (note)

Repeal the note, substitute:

- Note 1: *Container* and *designated container* have special definitions for the purposes only of this Division.
- Note 2: The baggage of a passenger entering or leaving Australia or of the captain or crew of a vessel or aircraft so entering or leaving is not a designated container.
- Note 3: To determine the question whether a person is carrying a designated container, or goods reasonably suspected of being special forfeited goods, on his or her body, see subsection 4(19).

52 Subsection 203B(2)

Omit “The authorised person”, substitute “In the circumstance referred to in paragraph (1)(a), the authorised person”.

53 Paragraphs 203B(2)(a) and (b)

Omit “the special forfeited goods” (wherever occurring), substitute “special forfeited goods”.

54 Subsection 203B(2)

Omit “the goods”, substitute “any goods that the authorised person reasonably suspects are special forfeited goods”.

55 After subsection 203B(2)

Insert:

- (2A) In the circumstance referred to in paragraph (1)(b), an authorised person who is an officer of Customs may, without warrant:

-
- (a) search any designated container in the immediate physical possession of the person to whom that paragraph applies; and
 - (b) seize any goods reasonably suspected by the authorised person of being special forfeited goods (whether or not those goods are found as a result of such a search).
- (2B) An authorised person must not exercise the powers referred to in subsection (2A) unless the person having immediate physical possession of the container to be searched is present at the time when the container is searched.
- (2C) For the avoidance of doubt, the power of the authorised person under subsection (2) to seize, without warrant, goods found as a result of a search of, or at, a Customs place that are reasonably suspected of being special forfeited goods includes the power to seize, without warrant, any goods that:
- (a) have been produced as a result of a frisk search of a person; or
 - (b) have been discovered on the body of a person as a result of an external search or an internal search of the person;
- if the search is conducted under Division 1B at the Customs place and the goods are reasonably so suspected.

56 Subsection 203B(3)

After “searching”, insert “under subsection (2) or (2A)”.

57 Subsection 203B(4)

Omit “the search”, substitute “a search conducted under subsection (2) or (2A)”.

58 Subparagraph 203C(1)(a)(ii)

Repeal the subparagraph, substitute:

- (ii) in, on, or in a container on, a conveyance at a place other than a Customs place; or
- (iii) in a container in the immediate physical possession of, but not carried on the body of, a person at a place other than a Customs place; and

59 Paragraphs 203C(2)(a) and (b)

Omit “the narcotic goods” (wherever occurring), substitute “narcotic goods”.

60 After paragraph 203C(2)(b)

Insert:

or (c) search the container in the immediate physical possession of the person for narcotic goods;

61 Subsection 203C(2)

Omit “the goods”, substitute “any goods that the authorised person reasonably suspects are narcotic goods”.

62 After subsection 203C(2)

Insert:

- (2A) For the avoidance of doubt, the power of the authorised person to seize, without warrant, goods found at a place other than a Customs place that are reasonably suspected of being narcotic goods includes the power to seize, without warrant, any goods that:
- (a) have been produced as a result of a frisk search of a person;
or
 - (b) have been discovered on the body of a person as a result of an external search or an internal search of the person;
- if the search is conducted under Division 1B at a place other than a Customs place and the goods are reasonably so suspected.

63 Subsection 203C(3)

After “searching”, insert “under subsection (2)”.

64 Subsection 203C(4)

Omit “the search”, substitute “a search conducted under subsection (2)”.

65 Subsection 203D(2)

Repeal the subsection, substitute:

- (2) An authorised person exercising a power under section 203B or 203C may use such force as is necessary and reasonable in the circumstances, but must not:

-
- (a) forcibly remove any container or other goods from a person's physical possession; or
 - (b) damage any place, conveyance, container or other goods of which the person is apparently in charge;
- unless:
- (c) the person has been given a reasonable opportunity to facilitate the search by providing access to the place, conveyance, container or goods or by opening the conveyance or container; or
 - (d) it is not possible to give that person such an opportunity.

66 Subdivision G (heading)

Repeal the heading, substitute:

Subdivision G—Dealing with forfeited goods seized under a seizure warrant or under subsection 203B(2) or (2A) or 203C(2)

67 Subsections 205(1) and 205B(1), section 205C, subsections 205D(1), 205E(1), 206(1), (2) and (5) and 207(1), section 208D and subsection 208DA(1) (definition of *condemned goods*)

After “203B(2)” (wherever occurring), insert “or (2A)”.

Note: The heading to section 205E is altered by inserting “or (2A)” after “203B(2)”.

68 Subparagraph 219A(2)(c)(i)

After “203B(2)”, insert “or (2A)”.

69 Subsection 219L(1)

After “any prohibited goods”, insert “on his or her body”.

70 Subsection 219L(1)

Omit “a place identified under section 234AA as a place of a kind referred to in that section”, substitute “a designated place”.

71 After subsection 219L(1)

Insert:

(1A) If:

- (a) officers have boarded a ship, aircraft or installation under section 185 or 187 for the purpose of conducting a search, or exercising any other power, under that section, in relation to that ship, aircraft or installation; and
 - (b) a detention officer suspects on reasonable grounds that a person who is on board the ship, aircraft or installation is unlawfully carrying prohibited goods on his or her body;
- the detention officer may detain the person for the purpose of being searched under this Subdivision.

(1B) If:

- (a) officers have boarded a ship or aircraft under section 185 for the purpose of conducting a search, or exercising any other power, under that section, in relation to that ship or aircraft; and
 - (b) a detention officer suspects on reasonable grounds that a person:
 - (i) who is on board the ship or aircraft; or
 - (ii) who is about to board, or has boarded, a Customs vessel for a purpose connected with the conduct of such a search or the exercise of such other power;is carrying on his or her body any weapon or thing that is capable of being used to inflict bodily injury on an officer conducting that search or exercising that other power;
- the detention officer may detain the person for the purpose of being searched under this Subdivision.

72 Subsection 219L(2)

Omit “subsection (1), a suspicion on reasonable grounds”, substitute “subsection (1), (1A) or (1B), a suspicion on reasonable grounds for the purposes of that subsection”.

73 Paragraph 219L(2)(e)

Repeal the paragraph, substitute:

- (e) the contents of or appearance of any visible item carried by the person or, if the person has baggage, of the person’s baggage, whether or not carried by the person;

-
- (f) the answers given by the person in relation to questions asked by an officer of Customs in the exercise of powers under this Act, or the refusal or failure of the person to answer such questions;
 - (g) the documents produced by the person in compliance with an obligation under this Act, or the refusal or failure of the person to produce such documents.

74 Subsection 219M(2)

After “frisk search”, insert “of a person who is detained in a designated place that is a section 234AA place”.

75 At the end of section 219M

Add:

- (3) If the detainee is detained at a designated place other than a section 234AA place, then, in the conduct of a frisk search of the detainee, the officer conducting the search must use his or her best endeavours to give the detainee as much personal privacy as the circumstances of the search allow.
- (4) Before carrying out the frisk search of a person who is detained under subsection 219L(1B), the officer of Customs must:
 - (a) inform the person that the person is being detained so that a search for any weapon or thing capable of being used to inflict bodily injury on an officer can be conducted; and
 - (b) inform the person:
 - (i) that the person must submit to the search; and
 - (ii) that if, as a result of the search, an officer of Customs finds any thing, the officer may take possession of the thing so found; and
 - (iii) that if the person fails to submit to the search, or, having submitted to the search, attempts to prevent an officer of Customs taking possession of any thing found as a result of the search, an officer of Customs may use reasonable force to conduct the search and to take possession of that thing.

76 Section 219N

Repeal the section, substitute:

219N Power to require the production of things

The officer of Customs carrying out a frisk search of a person detained in the circumstances referred to in subsection 219L(1) or (1A) may require the production of any thing found, as a result of that search, to be carried on the body of the detainee in order to determine whether it is, or contains, prohibited goods unlawfully carried by the detainee.

219NA Use of reasonable force, and consequent powers, in particular circumstances

- (1) If a person detained in the circumstances set out in subsection 219L(1B):
 - (a) refuses to submit to a frisk search by an officer of Customs under this Subdivision; or
 - (b) having submitted to a frisk search, attempts to prevent an officer of Customs taking possession of any thing found as a result of that search that might be used to inflict bodily injury on an officer conducting a search, or exercising any other power, under section 185;the officer of Customs detaining the person may use reasonable force to conduct that search or to take possession of that thing, as the case requires.
- (2) The officer of Customs who has taken possession of a thing under subsection (1) may retain custody of the thing for so long only as is necessary to permit the conduct of the search, or the exercise of that other power, under section 185, without risk of injury.
- (3) For the avoidance of doubt, an officer of Customs may, under section 203C, or under a warrant granted under section 203 or 203M, seize any prohibited goods:
 - (a) that the officer would be authorised to seize under that section or that warrant; and
 - (b) that, in the course of carrying out a frisk search of a person, are found by the officer to be carried on the person's body;even though the person was detained for the purposes of the search in the circumstances set out in subsection 219L(1B).

77 Section 219P

Omit “section 219L”, substitute “subsection 219L(1) or (1A)”.

78 Subsection 219Q(1)

After “any prohibited goods”, insert “on his or her body”.

79 Paragraph 219R(1)(b)

After “carrying prohibited goods”, insert “on his or her body”.

80 Paragraph 219R(1)(d)

Repeal the paragraph, substitute:

- (d) in any other case, the detention officer or police officer must, as soon as practicable, apply to a Justice or, in the circumstances set out in subsection (1A), to an authorised officer, for an order for an external search of the detainee.

81 After subsection 219R(1)

Insert:

- (1A) The detention officer or police officer may apply to an authorised officer only if:
 - (a) the detainee has waived his or her right to have the application for an order considered by a Justice; or
 - (b) a Justice is not reasonably available to consider such an application.

82 Paragraph 219R(12)(d)

After “carried by the person”, insert “on his or her body”.

83 After subsection 219ZC(2)

Insert:

- (2A) Without otherwise limiting the application of subsection (2), the use of force in actually conducting an external search of a detainee will be regarded as reasonable and necessary:
 - (a) if an order has been made by a Justice under section 219R and the detainee does not submit to the search; or
 - (b) if an order has been made under that section by an authorised officer because a Justice was not reasonably available and the detainee does not submit to the search.

84 After paragraph 219ZE(1)(c)

Insert:

- (ca) if the detention is under Subdivision A in the circumstances referred to in subsection 219L(1) or (1A)—no detention officer suspects on reasonable grounds that the person is unlawfully carrying prohibited goods on his or her body; or
- (cb) if the detention is under Subdivision A in the circumstances referred to in subsection 219L(1B)—no detention officer suspects on reasonable grounds that the person is carrying on his or her body a weapon or thing capable of being used to inflict bodily injury on an officer of Customs; or

85 Paragraph 219ZE(1)(d)

After “carrying prohibited goods”, insert “on his or her body”.

86 After subsection 219ZL(4)

Insert:

- (4A) No civil or criminal action is to be brought against a Justice in respect of anything done, or omitted to be done, in performing the function of, or a function connected with, making an order under section 219R.

87 After Part XII

Insert:

Part XIIA—Special provisions relating to prohibited weapons

227A Overview of Part

This Part deals with certain weapons on board a ship or an aircraft that is in Australia after arriving in Australia from a place outside Australia. The Part empowers an officer, under certain circumstances:

- (a) to approve a storage place on the ship or aircraft for the purpose of safekeeping the weapon; or
- (b) to take the weapon into custody;

for a period that ends when the ship or aircraft departs from Australia or otherwise ceases to be subject to this Part.

227B Definitions

In this Part:

operator means:

- (a) in relation to a ship—the owner or master of the ship; and
- (b) in relation to an aircraft—the owner or pilot of the aircraft.

prohibited weapon means a thing that is a firearm, firearm accessory, firearm part, firearm magazine or ammunition to which this Part applies because of section 227D.

227C Ships and aircraft to which this Part applies

- (1) This Part applies to a ship if:
 - (a) the ship is in Australia after undertaking a voyage to Australia from a place outside Australia; and
 - (b) the ship is not a ship that is taken to have been imported into Australia under subsection 49A(7).
- (2) This Part applies to an aircraft if:
 - (a) the aircraft is in Australia after undertaking a flight to Australia from a place outside Australia; and
 - (b) the aircraft is not an aircraft that is taken to have been imported into Australia under subsection 49A(7).
- (3) This Part ceases to apply to a ship when:
 - (a) the ship has departed from its last port in Australia for a place outside Australia; or
 - (b) the ship is taken to have been imported into Australia under subsection 49A(7).
- (4) This Part ceases to apply to an aircraft when:
 - (a) the aircraft has departed from its last airport in Australia for a place outside Australia; or
 - (b) the aircraft is taken to have been imported into Australia under subsection 49A(7).

(5) If:

- (a) this Part ceased to apply to a ship because the ship has departed from its last port in Australia as mentioned in paragraph (3)(a); but
- (b) the ship returns to Australia before completing a voyage to a place outside Australia;

then, subject to paragraph (1)(b) and subsection (3), this Part applies to the ship after it has so returned as if it has just undertaken a voyage to Australia from a place outside Australia.

(6) If:

- (a) this Part ceased to apply to an aircraft because the aircraft has departed from its last airport in Australia as mentioned in paragraph (4)(a); but
- (b) the aircraft returns to Australia before completing a flight to a place outside Australia;

then, subject to paragraph (2)(b) and subsection (4), this Part applies to the aircraft after it has been so returned as if it has just undertaken a flight to Australia from a place outside Australia.

227D Weapons to which this Part applies

This Part applies to any thing that is a firearm, firearm accessory, firearm part, firearm magazine or ammunition if:

- (a) it is on board a ship or an aircraft to which this Part applies; and
- (b) it falls within column 2 of an item in Part 2 of Schedule 6 to Regulation 4F of the Customs (Prohibited Imports) Regulations; and
- (c) it does not meet the requirements that apply to that thing as specified in column 3 of that item in that Part of that Schedule; and
- (d) it is, or should have been, specified in a report given by the operator under section 64AA as part of the stores, or personal effects of the crew, of the ship or aircraft.

227E Approved storage for prohibited weapons

- (1) An officer may, in writing, approve a place on board a ship or an aircraft to which this Part applies as a place in which a prohibited

weapon on board that ship or aircraft must be stored while this Part applies to the ship or aircraft.

- (2) An officer must not give the approval unless the officer is satisfied that:
- (a) only the operator concerned may access the place; and
 - (b) the place is otherwise sufficiently secure for the purposes of preventing persons from removing the weapon from the place.
- Example: If a safe on board a ship is sought to be approved under subsection (1), the approval may not be given if a person other than the operator of the ship holds a key to the safe.
- (3) An officer may place a fastening, or a lock, mark or seal on an approved place for the purposes of preventing persons from accessing that place.
- (4) If an approval under subsection (1) is not revoked at an earlier time, it continues to be in force until this Part ceases to apply to the ship or aircraft concerned.
- (5) While an approval under subsection (1) is in force in relation to a prohibited weapon, a person must not, without written permission of an officer:
- (a) interfere in any way with any fastening, lock, mark or seal placed on the approved place by an officer; or
 - (b) remove the weapon from the approved place.

Penalty: 45 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.

227F Officer may take custody of weapons

- (1) If:
- (a) this Part applies to a prohibited weapon on board a ship or aircraft; and
 - (b) no approval under section 227E is in force in relation to a place on board that ship or aircraft as the place for storing that weapon;
- an officer must take custody of that weapon.

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- (2) Within 48 hours after taking custody of the weapon, an officer must give a written notice to the operator of the ship or aircraft under this section.
 - (3) The notice must be in an approved form.
 - (4) Without limiting subsection (3), the notice must identify the prohibited weapon concerned.
 - (5) The CEO must ensure that a weapon taken into custody under this section is:
 - (a) securely stored while it is in custody under this section; and
 - (b) returned to the operator of the ship or aircraft concerned:
 - (i) if subparagraph (ii) does not apply—when the ship is at its last port of call in Australia, or when the aircraft is at its last airport of call in Australia, and after a Certificate of Clearance referred to in section 118 has been granted in relation to the departure of that ship from that port, or the departure of the aircraft from that airport (as the case requires); or
 - (ii) when this Part ceases to apply to the ship or aircraft because it is taken to have been imported into Australia under subsection 49A(7).
 - (6) To avoid doubt, subsection (5) does not affect the power of an officer to seize or otherwise deal with the weapon under this Act (including provisions in this Act relating to prohibited goods) when this Part ceases to apply to the ship or aircraft concerned.
 - (7) After a weapon is returned to the operator under subsection (5) and before the ship or aircraft leaves Australia, the operator concerned must comply with any conditions specified by the CEO in relation to the storage of that weapon.

227G Compensation for damage etc. to weapons

- (1) If:
 - (a) an activity undertaken by or on behalf of Customs in relation to a prohibited weapon taken into custody under this Part causes the loss or destruction of, or damage to, that weapon; and

(b) the loss, destruction or damage occurred wholly or partly as a result of:

- (i) insufficient care being exercised in selecting the persons to undertake the activity; or
- (ii) insufficient care being exercised by the person undertaking that activity;

compensation for the loss, destruction or damage is payable to the owner of the weapon concerned.

- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.

88 Section 278

Repeal the section.

Schedule 2—Amendment of the Customs Administration Act 1985

1 Subsections 16(1), (2) and (3)

Repeal the subsections, substitute:

Overview

- (1) This section:
- (a) prohibits the unauthorised disclosure and recording of certain information held by the Australian Customs Service (see subsection (2)); and
 - (b) provides for a number of exceptions in relation to that prohibition (see subsections (3) to (4)); and
 - (c) makes other provisions that relate to each of those exceptions (including, in particular, the provisions on the disclosure of personal information under subsections (7) to (10)).

Definitions

- (1A) In this section:

AQIS means the operating group within the Department of Primary Industries and Energy having responsibility in relation to the administration of the *Imported Food Control Act 1992* and the *Quarantine Act 1908*.

authorised officer of AQIS means the Secretary to the Department of Primary Industries and Energy or an officer of AQIS appointed by the Secretary under the *Imported Food Control Act 1992* to be an authorised officer for the purpose of any provision of that Act.

authorised person means:

- (a) the CEO; or
- (b) a person performing duties in the Australian Customs Service as a person employed or engaged by the Commonwealth, a Commonwealth agency, a State or a State agency; or
- (c) any of the following persons:

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- (i) a person engaged to provide goods or services to the Commonwealth through the Australian Customs Service (whether or not under an agreement to which the Commonwealth is a party);
 - (ii) if the person mentioned in subparagraph (i) is a body corporate—a director, an employee or an agent, of that body corporate;
 - (iii) if the person mentioned in subparagraph (i) is an individual—an employee or an agent of that individual; or
- (d) a person to whom the CEO has delegated a power or function of the CEO under a law of customs or excise or any other law of the Commonwealth; or
 - (e) a person authorised by the CEO to exercise a power or function of the CEO under a law of customs or excise or under any other law of the Commonwealth.

Commonwealth agency means any instrumentality or agency of the Crown in right of the Commonwealth, and includes a department of the public service of the Commonwealth and any body corporate in which the Commonwealth holds a controlling interest, but does not include a Minister of the Crown in right of the Commonwealth.

duties, in relation to an authorised person, means the duties of the person in the capacity because of which he or she is an authorised person and only includes such duties that are performed in or in connection with the Australian Customs Service.

Example: In the case of an authorised person who is employed by a State agency, the person's duties, for the purposes of this section, include only those duties performed in or in connection with the Australian Customs Service as such an employee and does not include the person's other duties as an employee of that State agency.

food has the same meaning as in the *Imported Food Control Act 1992*.

international organisation means:

- (a) an international organisation within the meaning of the *Diplomatic Privileges and Immunities Act 1967*; and
- (b) any other international organisation prescribed by the regulations for the purposes of this paragraph.

personal information has the same meaning as in the *Privacy Act 1988*.

principal officer, in relation to a Commonwealth agency or a State agency, means:

- (a) if the agency is constituted by one person—that person; and
- (b) if the agency is constituted by more than one person—the person who is entitled to preside at any meeting of the agency at which he or she is present; and
- (c) in any other case—the person holding, or performing the duties of, the office of the head of that agency.

protected information means information that directly or indirectly comes to the knowledge of, or into the possession of, an authorised person while the authorised person is performing his or her duties (whether the information is related to those duties or not).

State includes the Northern Territory and the Australian Capital Territory.

State agency means any instrumentality or agency of the Crown in right of a State, and includes a department of the public service of the State and any body corporate in which the State holds a controlling interest, but does not include a Minister of the Crown in right of the State, a municipal corporation or any other local government body.

Prohibition against disclosure etc. of protected information

- (2) A person who is or has been an authorised person must not directly or indirectly:
 - (a) make a record of any protected information; or
 - (b) disclose to any person any protected information;except:
 - (c) as authorised by this section; or
 - (d) as required or authorised by any other law; or
 - (e) in the course of performing the person's duties.

Penalty: Imprisonment for 2 years.

Authorised disclosure under this section

- (3) Subject to subsections (7), (8) and (10), a person is authorised by this section to carry out an act referred to in paragraph (2)(a) or (b) if it is carried out:
- (a) in accordance with an authorisation by the CEO that is referred to in subsection (3A), (3B), (3C) or (3D); or
 - (b) as provided in subsection (3F) or (4).

CEO's authorisation—Commonwealth agency

- (3A) Subject to subsections (3E), (7), (8) and (10), if the CEO is satisfied that:
- (a) information or a class of information held by the Australian Customs Service will be used by a Commonwealth agency for the purposes of that agency's functions; and
 - (b) the Commonwealth agency has undertaken not to use or further disclose such information or class of information except for the purpose referred to in paragraph (d) or otherwise as required or authorised by law;

the CEO may in writing:

- (c) authorise the disclosure by an authorised person of the information or the class of information to the principal officer of, or a person authorised to act on behalf of, that agency; and
- (d) specify the purpose for which the disclosure is authorised to be made and the manner in which, or the conditions under which, the disclosure is to be made (including the form in which the information is to be presented and the mode of transmitting that information).

CEO's authorisation—State agency for Commonwealth purposes

- (3B) Subject to subsections (3E), (7), (8) and (10), if the CEO is satisfied that:
- (a) information or a class of information held by the Australian Customs Service will be used by a State agency for purposes relating to the carrying out of a Commonwealth function by that agency; and
 - (b) the State agency has undertaken not to use or further disclose such information or class of information except for the

purpose referred to in paragraph (d) or otherwise as required or authorised by law;

the CEO may in writing:

- (c) authorise the disclosure by an authorised person of the information or the class of information to the principal officer of, or a person authorised to act on behalf of, that agency; and
- (d) specify the purpose for which the disclosure is authorised to be made and the manner in which, or the conditions under which, the disclosure is to be made (including the form in which the information is to be presented and the mode of transmitting that information).

CEO's authorisation—State agency for State purposes

(3C) Subject to subsections (3E), (7), (8) and (10), if the CEO is satisfied that:

- (a) information or a class of information held by the Australian Customs Service will be used by a State agency for the purposes of the performance of the functions of the State agency; and
- (b) the State agency has undertaken not to use or further disclose such information or class of information except for the purpose referred to in paragraph (d) or otherwise as required or authorised by law;

the CEO may in writing:

- (c) authorise the disclosure by an authorised person of the information or the class of information to the principal officer of, or a person authorised to act on behalf of, that agency; and
- (d) specify the purpose for which the disclosure is authorised to be made and the manner in which, or the conditions under which, the disclosure is to be made (including the form in which the information is to be presented and the mode of transmitting that information).

CEO's authorisation—certain agreements

(3D) Subject to subsections (3E), (7), (8) and (10), if the CEO is satisfied that:

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- (a) information or a class of information held by the Australian Customs Service will be used in accordance with an agreement that has been entered into by the Commonwealth or a Commonwealth agency and one or more of any of the following:
- (i) a foreign country;
 - (ii) an instrumentality or agency of a foreign country;
 - (iii) an international organisation; and
- (b) the country, instrumentality, agency or organisation has undertaken not to use or further disclose that information except for the purpose referred to in paragraph (d) or otherwise as required or authorised by law;

the CEO may in writing:

- (c) authorise the disclosure by an authorised person of the information or the class of the information to a person authorised to act on behalf of that country, instrumentality, agency or organisation; and
- (d) specify the purpose for which the disclosure is authorised to be made and the manner in which, or the conditions under which, the disclosure is to be made (including the form in which the information is to be presented and the mode of transmitting that information).

Specified purpose in an authorisation by the CEO

- (3E) The CEO may only specify a purpose for the disclosure of information or a class of information in an authorisation under subsection (3A), (3B), (3C) or (3D) that:
- (a) in the case of subsection (3A)—is related to the performance of the functions of the Commonwealth agency concerned; and
 - (b) in the case of subsection (3B)—is related to the performance of the Commonwealth function concerned; and
 - (c) in the case of subsection (3C)—is related to the performance of the functions of the State agency concerned; and
 - (d) in the case of subsection (3D)—is related to the purpose of the agreement concerned.

Note: The obligations under subsection (3E) is affected by paragraph (8)(b) if the information concerned contains personal information.

Authorised disclosure because of threat to health or life

- (3F) A person may carry out an act referred to in paragraph (2)(a) or (b) if there are reasonable grounds for that person to believe that:
- (a) a serious and imminent threat to the health or life of a person or persons exists or might exist; and
 - (b) it is necessary to carry out that act in order to avert or reduce that threat.

Note 1: The following heading to subsection 16(4) is inserted “*Authorised disclosure of cargo reports etc.*”.

Note 2: The following heading to subsection 16(5) is inserted “*Prohibition against further disclosure*”.

Note 3: The following heading to subsection 16(6) is inserted “*Computer access to certain information*”.

2 Subsection 16(7)

Repeal the subsection, substitute:

Disclosure of personal information

(7) If:

- (a) apart from this subsection, a person is authorised by this section to carry out an act referred to in paragraph (2)(a) or (b) because of the operation of subsection (3A), (3B), (3C), (3D) or (4); and
- (b) the act involves the disclosure by that person to another person or to a body of information (including a class of information) that contains personal information;

then, despite the preceding provisions in this section, the person is not to be taken to be authorised by this section to carry out that act unless:

- (c) the disclosure complies with subsection (8); and
- (d) in the case of a disclosure of a class of information pursuant to an authorisation under subsection (3A), (3B), (3C) or (3D)—the disclosure also complies with subsection (10).

Requirements applicable to disclosure of information containing personal information

- (8) This subsection is complied with in relation to the disclosure of information as referred to in subsection (7) if:

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- (a) the CEO is satisfied that the disclosure is necessary for a permissible purpose referred to in a paragraph of subsection (9); and
 - (b) the purpose is specified as the purpose for which the disclosure is authorised to be made in:
 - (i) an authorisation under subsection (3A), (3B), (3C) or (3D) that applies to the disclosure; or
 - (ii) in the case of a disclosure under subsection (4)— a written approval of that disclosure made by the CEO under this subsection; and
 - (c) the disclosure is made for that purpose.

Permissible purposes

- (9) A purpose specified in any of the following paragraphs is a permissible purpose for the purpose of subsection (8):
 - (a) the administration or enforcement of a law of the Commonwealth, of a Territory or of another country that relates to:
 - (i) criminal law; or
 - (ii) a law imposing a pecuniary penalty or providing for the forfeiture of property;
 - (b) in relation to a law referred to in paragraph (a), the prevention of crime, or the detection or analysis of criminal conduct, in respect of that law;
 - (c) the administration or enforcement of a law of a State that relates to:
 - (i) criminal law; or
 - (ii) a law imposing a pecuniary penalty or providing for the forfeiture of property;
 - (d) in relation to a law referred to in paragraph (c), the prevention of crime, or the detection or analysis of criminal conduct, in respect of that law;
 - (e) a purpose relating to the protection of public health, or the prevention or elimination of risks to the life or safety of an individual or a group of individuals;
 - (f) the collection of the public revenue of the Commonwealth, a Territory or another country;
 - (g) the collection of the public revenue of a State;

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- (h) a purpose relating to a law of customs or excise;
 - (i) a purpose relating to immigration, quarantine or border control between Australia or another country;
 - (j) the administration or enforcement of laws with respect to commerce:
 - (i) between a State and another State; or
 - (ii) between a State and a Territory; or
 - (iii) between a Territory and another Territory; or
 - (iv) between Australia and another country;
 - (k) the administration or enforcement of laws with respect to commerce within a State.

Additional requirements concerning classes of information

- (10) This subsection is complied with in relation to a disclosure of a class of information pursuant to an authorisation under subsection (3A), (3B), (3C) or (3D) as referred to in subsection (7) if:
 - (a) the disclosure is made to a Commonwealth agency, State agency, a foreign country, an instrumentality or agency of a foreign country or an international organisation, that is specified in the regulations; and
 - (b) the class of information specified by the CEO in the authorisation is specified in the regulations as a class of information that may be disclosed to the agency, country, instrumentality or organisation concerned.

3 After section 16

Insert:

16AA Conduct by directors, employees and agents

- (1) This section applies for the purposes of a prosecution for:
 - (a) an offence created by a provision in this Act or the regulations; or
 - (b) an offence created by section 5, 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to an offence referred to in paragraph (a).
- (2) If it is necessary to prove the state of mind of a body corporate in relation to particular conduct, it is enough to show that:

-
- (a) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) the director, employee or agent had the state of mind.
- (3) If:
- (a) conduct is engaged in on behalf of a body corporate by a director, employee or agent of the body corporate; and
- (b) the conduct is within the scope of his or her actual or apparent authority;
- the conduct is taken, for the purposes of the prosecution of an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (4) In this section:
- director**, in relation to a body that:
- (a) is incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory; and
- (b) is constituted by one or more members;
- means the member, or any of the members, constituting the body.
- engage in conduct** includes fail or refuse to engage in conduct.
- state of mind**, in relation to a person, includes:
- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.
-

[Minister's second reading speech made in—
Senate on 25 November 1998
House of Representatives on 21 October 1999]

(143/98)

