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Customs (Interception of Vessels) Regulations 2001

Statutory Rules 2001 No. 1

267

I, PETER JOHN HOLLINGWORTH, Governor-General of the
Commonwealth of Australia, acting with the advice of the
Federal Executive Council, make the following Regulations
under the *Customs Act 1901*.

Dated 27 SEP 2001 2001

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

CHRISTOPHER MARTIN ELLISON
Minister for Justice and Customs

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Part 1 Preliminary

1 Name of Regulations

These Regulations are the *Customs (Interception of Vessels) Regulations 2001*.

2 Commencement

These Regulations commence on gazettal.

3 Definitions

In these Regulations:

Act means the *Customs Act 1901*.

place means any place in or outside Australia.

weapon includes any thing capable of being used to inflict bodily injury or to help an individual escape from restraint.

Regulation 5

Part 2

Powers under an agreement or arrangement with a foreign country

4 Exercise of power to restrain an individual

- (1) In the exercise of a power under this Part to restrain an individual, the officer:
 - (a) must not use more force, or subject the individual to greater indignity, than is reasonably necessary to exercise the power; and
 - (b) must not do anything likely to cause the individual grievous bodily harm unless the officer believes on reasonable grounds that doing the thing is necessary to protect life or prevent serious injury to the individual or another individual (including the officer).
- (2) In this regulation:
officer includes a person assisting the officer.

5 Exercise of power to search an individual

- (1) This regulation applies to a search under this Part of an individual, clothing of an individual or property under the immediate control of an individual.
- (2) The purpose for which an individual, clothing of the individual or any property under the immediate control of the individual may be searched is to find out whether the individual is carrying a weapon, or a weapon is hidden on the individual, in the clothing or in the property.
- (3) This regulation does not authorise an officer, or another individual conducting a search under subregulation (4), to remove any of the individual's clothing, or to require an individual to remove any of his or her clothing, except the individual's outer garments (including but not limited to the individual's overcoat, coat, jacket, gloves, shoes and head covering).

Regulation 6

- (4) A search of an individual, and the individual's clothing, must be conducted by:
 - (a) an officer of the same sex as the individual; or
 - (b) if an officer of the same sex as the individual is not available to conduct the search — any other individual who is of the same sex and:
 - (i) is requested by an officer; and
 - (ii) agrees;to conduct the search.
- (5) An officer or other individual who conducts a search to which this regulation applies must not use more force, or subject the individual to greater indignity, than is reasonably necessary to conduct the search.

6 Protection of persons when acts done in good faith

- (1) An action or proceeding, whether civil or criminal, does not lie, in respect of anything done in the exercise of a power under this Part to restrain an individual, against the Commonwealth, an officer or an individual assisting an officer if the officer or individual who does the thing acts in good faith and does not contravene regulation 4.
- (2) An action or proceeding, whether civil or criminal, does not lie against an individual who, at the request of an officer under subregulation 5 (4), conducts a search under that subregulation if the individual acts in good faith and does not contravene subregulation 5 (5).

**7 Powers when boarding certain foreign ships
(Act s 185 (3F))**

For subsection 185 (3F) of the Act, the powers that the officer may exercise, consistently with the agreement or arrangement, are the powers to do the following:

- (a) search, without warrant:
 - (i) an individual on the ship; or
 - (ii) the clothing of the individual; or

Regulation 8

- (iii) any property under the immediate control of the individual;
- (b) take possession of any weapon for as long as the officer thinks necessary for the purposes of this regulation;
- (c) restrain any individual on board the ship for as long as the officer thinks necessary for the purposes of this regulation;
- (d) detain the ship for as long as the officer thinks necessary for the purposes of this regulation;
- (e) bring the ship, or cause it to be brought, to a place that the officer considers appropriate.

8 Powers when boarding certain foreign ships on the high seas (Act s 185A (4))

- (1) For subsection 185A (4) of the Act, the powers that the officer may exercise, consistently with the agreement or arrangement, are the powers to do the following:
 - (a) search the ship;
 - (b) search, without warrant:
 - (i) an individual on the ship; or
 - (ii) the clothing of the individual; or
 - (iii) any property under the immediate control of the individual;
 - (c) take possession of any weapon for as long as the officer thinks necessary for the purposes of this regulation;
 - (d) restrain any individual on board the ship for as long as the officer thinks necessary for the purposes of this regulation;
 - (e) detain the ship for as long as the officer thinks necessary for the purposes of this regulation;
 - (f) bring the ship, or cause it to be brought, to a port or other place that the officer considers appropriate;
 - (g) return to the ship any individual who:
 - (i) was on the ship when it was initially detained under paragraph (e); and
 - (ii) later leaves the ship.

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- (2) Subject to this Part, an officer may use such force as is necessary and reasonable in the exercise of a power under this regulation.
- (3) In searching the ship, an officer must not damage the ship or any goods on the ship by forcing open a part of the ship or the goods unless:
 - (a) the individual (if any) apparently in charge of the ship has been given a reasonable opportunity to open that part or the goods; or
 - (b) it is not reasonably practical to give that individual such an opportunity.
- (4) An individual may be returned to a ship under paragraph (1) (g) only if the officer or individual assisting the officer is satisfied that it is safe to do so.

Note

1. Notified in the *Commonwealth of Australia Gazette* on / 2001.

5 October