



CUSTOMS ACT 1901

Reprinted as at 31 July 1981



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Commercial quantities of narcotic substances



CUSTOMS ACT 1901

An Act relating to the Customs

PART I—INTRODUCTORY

1. This Act may be cited as the *Customs Act* 1901.¹
2. This Act shall commence on a day to be fixed by Proclamation.¹

* * * * *

4. (1) In this Act except where otherwise clearly intended—

“Aircraft” includes aeroplanes, seaplanes, airships, balloons or any other means of aerial locomotion.

“Airport” means an airport appointed under section 15.

“Airport owner” includes the occupier of an airport.

“Answer questions” means that the person on whom the obligation of answering questions is cast shall to the best of his knowledge, information, and belief truly answer all questions on the subject mentioned that the Collector shall ask.

“By authority” means by the authority of the officer of Customs doing duty in the matter in relation to which the expression is used.

“Cannabinoids” means cannabinoids of all kinds, other than a cannabinoid of a kind that can be obtained from a plant that is not a cannabis plant.

“Cannabis” means a cannabis plant, whether living or dead, and includes, in any form, any flowering or fruiting tops, leaves, seeds, stalks or any other part of a cannabis plant or cannabis plants and any mixture of parts of a cannabis plant or cannabis plants, but does not include cannabis resin or cannabis fibre.

Short title

Commencement

Section 3
repealed by
No. 216, 1973,
s. 3

Interpretation

Sub-section (1)
amended by
No. 12, 1923, s. 4;
No. 7, 1935, s. 3;
No. 56, 1950, s. 3;
No. 188, 1952,
s. 4; No. 47, 1953,
s. 2; No. 37, 1957,
s. 3; No. 54, 1959,
s. 4; No. 48, 1963,
s. 4; No. 28, 1965,
s. 4; No. 82, 1965,
s. 3; No. 133,
1965, s. 8; No. 54,
1967, s. 3; No. 14,
1968, s. 3;
No. 104, 1968,
s. 4; No. 134,
1971, s. 2;
No. 216, 1973,
s. 3; No. 28, 1974,
s. 7; No. 120,
1974, s. 3; No. 91,
1976, s. 3;
No. 174, 1976,
s. 3; No. 154,
1977, ss. 3 and 12;
No. 92, 1979, s. 3;
No. 180, 1979,
s. 3; No. 110,
1980, s. 3; No. 64,
1981, ss. 3 and 37

"Cannabis fibre" means goods that consist wholly or substantially of fibre obtained from a cannabis plant or cannabis plants but do not contain any other substance or thing obtained from a cannabis plant.

"Cannabis plant" means a plant of the genus *Cannabis*.

"Cannabis resin" means a substance that consists wholly or substantially of resin (whether crude, purified or in any other form) obtained from a cannabis plant or cannabis plants.

"Carriage" includes vehicles and conveyances of all kinds.

"Collector" includes the Comptroller and any Collector of Customs for a State or Territory and any principal officer of Customs doing duty at the time and place and any officer doing duty in the matter in relation to which the expression is used.

"Commercial quantity" means—

- (a) in relation to a narcotic substance the name of which is specified in Column 1 of Schedule VIII—the quantity that is specified in column 2 of that Schedule opposite to the name of the substance; and
- (b) in relation to a narcotic substance that is for the time being declared by the regulations to be a prescribed narcotic substance—the quantity that is prescribed by the regulations to be the commercial quantity in relation to that narcotic substance.

"Commissioner of Police" means the Commissioner of Police referred to in section 6 of the *Australian Federal Police Act 1979*, and includes an acting Commissioner of Police.

"Comptroller" means the Comptroller-General of Customs.

"Country" includes territory or other place.

"Customs Acts" includes this Act and all laws and regulations relating to Customs in force within the Commonwealth or any part of the Commonwealth.

"Customs Tariff" means an Act imposing duties of customs.

"Days" does not include Sundays or holidays.

"Deputy Commissioner of Police" means a Deputy Commissioner of Police referred to in section 6 of the *Australian Federal Police Act 1979*, and includes—

- (a) an acting Deputy Commissioner of Police; and
- (b) a member of the Australian Federal Police authorized in writing by the Commissioner of Police to act on behalf of the Australian Federal Police for the purposes of this Act.

"Developing country" has the same meaning as in the *Customs Tariff 1966-1974*.

"Documents" includes books.

"Drawback" includes bounty or allowance.

"Dutiable goods" includes all goods in respect of which any duty of Customs is payable.

"Duty" means duty of Customs.

"Gazette notice" means a notice signed by the Minister and published in the *Gazette*.

"Goods" includes—

- (a) ships and aircraft; and
- (b) all kinds of movable personal property.

"Goods under drawback" includes all goods in respect of which any claim for drawback has been made.

"Justice" means any Justice of the Peace having jurisdiction in the place.

"Lighter" includes a craft of every description used for the carriage of goods in a port.

"Master" means the person in charge or command of any ship except a pilot or Government officer.

"Member of the Australian Federal Police" includes a special member of the Australian Federal Police.

"Narcotic goods" means goods that consist of a narcotic substance.

"Narcotic-related goods" means—

- (a) narcotic goods;
- (b) moneys within the meaning of section 229A to which that section applies or is believed by the person in possession of the moneys to apply;
- (c) goods within the meaning of section 229A to which that section applies or is believed by the person in possession of the goods to apply; or
- (d) ships, aircraft, vehicles or animals that are, or are believed by the person in possession of them to be, forfeited goods by reason of having been used in the unlawful importation, exportation or conveyance of prohibited imports, or prohibited exports, that are narcotic goods.

"Narcotic substance" means a substance or thing the name of which is specified in column 1 of Schedule VI or any other substance or thing for the time being declared by the regulations to be a narcotic substance.

"Officer" or "Officer of Customs" means a person—

- (a) employed in the service of the Customs; or
- (b) authorized in writing by the Minister to perform the functions of an officer of Customs.

- "Owner" in respect of goods includes any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods.
- "Owner" in respect of a ship or aircraft includes every person acting as agent for the owner or to receive freight or other charges payable in respect of the ship or aircraft.
- "Parts beyond the seas" means any country outside of Australia.
- "Package" includes every means by which goods for carriage may be cased covered enclosed contained or packed.
- "Pilot" means the person in charge or command of any aircraft.
- "Place" includes ship or aircraft.
- "Port" means a port appointed under section 15.
- "prescribed narcotic substance" means a narcotic substance the name of which is specified in Column 1 of Schedule VIII or any other narcotic substance for the time being declared by the regulations to be a prescribed narcotic substance.
- "Produce documents" means that the person on whom the obligation to produce documents is cast shall to the best of his power produce to the Collector all documents relating to the subject matter mentioned.
- "Ship" means any vessel used in navigation, other than air navigation, and includes a barge, lighter or any other floating vessel.
- "Smuggling" means any importation, introduction or exportation or attempted importation, introduction or exportation of goods with intent to defraud the revenue.
- "The Customs" means the Department of Business and Consumer Affairs.
- "The United Kingdom" includes the Channel Islands and the Isle of Man.
- "This Act" includes all regulations made thereunder.
- "Traffickable quantity", in relation to a narcotic substance, means—
- where the name of the substance is specified in column 1 of Schedule VI—the quantity that is specified in column 2 of that Schedule opposite to the name of the substance; and
 - where the substance is for the time being declared by the regulations to be a narcotic substance—the quantity that is prescribed by the regulations to be the traffickable quantity in relation to that substance.
- "Warehouse" means a place that a person or partnership is licensed under section 79 to use for warehousing goods.

"Warehoused goods" means—

- (a) goods received into a warehouse in pursuance of an entry for warehousing or permission granted under section 40AA; or
- (b) goods manufactured in a warehouse in compliance with this Act.

"Wharf" means a wharf appointed under section 15.

"Wharf owner" includes any owner or occupier of any wharf.

(2) A reference in this Act to an officer of police or a police officer shall be read as a reference to a member of the Australian Federal Police or of the Police Force of a State or Territory.

Added by No. 54, 1959, s. 4; amended by No. 216, 1973, s. 3; No. 155, 1979, s. 3

(3) A reference in this Act or in any other Act to a Customs Tariff or Customs Tariff alteration proposed in the Parliament shall be read as a reference to a Customs Tariff or Customs Tariff alteration proposed by a motion moved in the House of Representatives, and a Customs Tariff or Customs Tariff alteration proposed by a motion so moved shall be deemed to have been proposed in the Parliament at the time at which the motion was moved.

Added by No. 48, 1963, s. 4

(4) For the purposes of this Act, goods (including goods in the form of a preparation, mixture or solution) that do not consist of a narcotic substance but from which a narcotic substance can be obtained shall be deemed to consist of that substance, and shall be deemed to consist of a quantity of that substance equal to the quantity of the substance that can be obtained from the goods.

Added by No. 134, 1971, s. 2

5. The penalty, pecuniary or other, set out—

- (a) at the foot of a section of this Act; or
- (b) at the foot of a sub-section of a section of this Act, but not at the foot of the section,

Penalties at foot of sections or sub-sections

Substituted by No. 56, 1951, s. 3; amended by No. 216, 1973, s. 3; No. 28, 1974, s. 7

indicates that a contravention of the section or of the sub-section, as the case may be, whether by act or omission, is an offence against this Act, punishable upon conviction by a penalty not exceeding (except as provided by sections 240 to 243, inclusive) the penalty so set out.

PART II—ADMINISTRATION

* * * * *

Section 6 repealed by No. 28, 1974, s. 3

7. There shall be a Comptroller-General of Customs who under the Minister shall be the permanent head of the Customs and shall have the chief control of the Customs throughout the Commonwealth.

Comptroller-General
Amended by No. 28, 1974, s. 7; No. 154, 1977, s. 12

s. 8

Collectors of
Customs
Substituted by
No. 14, 1968, s. 2

8. There shall be a Collector of Customs for each State and for the Northern Territory who shall, subject to the Comptroller, be the Chief Officer of Customs in the State or in the Territory, as the case may be.

Attachment
of part of a
State or
Territory to
adjoining
State or
Territory for
administra-
tive purposes
Substituted by
No. 14, 1968, s. 2

8A. The Governor-General may, by Proclamation, declare that, for the purposes of the administration of the Customs, a part of a State or Territory specified in the Proclamation is attached to an adjoining State or Territory so specified, and a part of a State or Territory so specified shall, for the purposes of this Act, be deemed to be part of the adjoining State or Territory.

Delegation
by Minister
Substituted by
No. 92, 1979, s. 4

9. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under the Customs Acts, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of the Customs Acts, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

Delegation
by
Comptroller
Substituted by
No. 92, 1979, s. 4

10. (1) The Comptroller may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under the Customs Acts, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of the Customs Acts, be deemed to have been exercised by the Comptroller.

(3) A delegation under this section does not prevent the exercise of a power by the Comptroller.

Arrange-
ments with
States and
the Northern
Territory
Substituted by
No. 92, 1979, s. 4

11. (1) The Governor-General may make arrangements with the Governor of a State—

- (a) for the performance by all or any of the persons who from time to time hold office as Judges of the Supreme Court of that State of the functions of a Judge under Division 1A of Part XII; and
- (b) for the performance by all or any of the persons who from time to time hold office as Magistrates in that State of the functions of a Magistrate under sections 196 and 196A.

(2) The Governor-General may make arrangements with the Administrator of the Northern Territory—

- (a) for the performance by all or any of the persons who from time to time hold office as Judges of the Supreme Court of that Territory

and are not also Judges of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory of the functions of a Judge under Division 1A of Part XII; and

- (b) for the performance by all or any of the persons who from time to time hold office as Magistrates in that Territory of the functions of a Magistrate under sections 196 and 196A.

* * * * *

Section 12
repealed by
No. 47, 1953, s. 3

13. (1) The Customs shall have a seal, called the Customs Seal, the design of which shall be determined by the Minister.

Customs Seal
Substituted by
No. 48, 1963, s. 5

(2) The design so determined shall include—

Amended by
No. 28, 1974, s. 7;
No. 154, 1977,
s. 12

- (a) the Coat of Arms of the Commonwealth, that is to say, the armorial ensigns and supporters granted to the Commonwealth by Royal Warrant dated 19 September 1912; and

- (b) the words "Australia—H.M. Customs".

(3) The Customs Seal shall be kept at such place, and in the custody of such person, as the Minister directs.

(4) The Customs Seal shall be used as directed by the Minister.

(5) The Comptroller, the Collector of Customs for a State and the Collector of Customs for the Northern Territory shall each have in his custody a stamp, called a Customs stamp, the design of which shall, as nearly as practicable, be the same as the design of the Customs Seal with the addition of—

Amended by
No. 14, 1968, s. 3

- (a) in the case of the stamp in the custody of the Comptroller—the words "Australian Capital Territory";
- (b) in the case of the stamp in the custody of a Collector of Customs for a State—the name of the State; and
- (c) in the case of the stamp in the custody of the Collector of Customs for the Northern Territory—the words "Northern Territory".

(6) A Customs stamp shall be used as provided by this Act.

(7) All courts (whether exercising federal jurisdiction or not) and all persons acting judicially shall take judicial notice of the impression of the Customs Seal, or of the mark of a Customs stamp, on a document or a copy of a document and, in the absence of proof to the contrary, shall presume that impression or mark, as the case may be, was made by proper authority.

14. The ships and aircraft employed in the service of the Customs shall be distinguished from other ships and aircraft by such flag or in such other manner as shall be prescribed.

Customs flag
Amended by
No. 12, 1923, s. 2;
No. 64, 1981,
s. 37

s. 15

Appointment
of ports, & c.
Substituted by
No. 110, 1980,
s. 4

15. (1) The Minister may, by notice published in the *Gazette*—
- appoint ports and fix the limits of those ports; and
 - appoint airports and fix the limits of those airports.
- (2) The Comptroller may, by notice published in the *Gazette*—
- appoint wharves and fix the limits of those wharves; and
 - appoint boarding stations for the boarding of ships and aircraft by officers.

(3) A notice under sub-section (1) or (2) may provide that a port, airport, wharf or boarding station appointed by the notice is to be a port, airport, wharf or boarding station for limited purposes specified in the notice.

Section 16
repealed by
No. 110, 1980,
s. 4

* * * * *

Appointment
of sufferance
wharfs, & c.

17. The Minister may by *Gazette* notice—
- Appoint sufferance wharfs in any port.
 - Appoint places for the examination of goods on landing.

Section 18
repealed by
No. 110, 1980,
s. 5

* * * * *

Accommo-
dation on
wharfs and at
airports

Amended by
No. 12, 1923, s. 2;
No. 108, 1952,
s. 20; No. 28,
1966, s. 4; No. 54,
1967, s. 10;
No. 64, 1981,
s. 37

19. Every wharf-owner and airport owner shall provide to the satisfaction of the Collector suitable office accommodation on his wharf or at his airport for the exclusive use of the officer employed at the wharf or airport also such shed accommodation for the protection of goods as the Minister may in writing declare to be requisite.

Penalty: \$100.

Sections 20 and
21 repealed by
No. 104, 1968,
s. 5; section 22
repealed by
No. 80, 1950, s. 3;
sections 23 and
24 repealed by
No. 104, 1968,
s. 5

* * * * *

Persons
before whom
declarations
may be made

Substituted by
No. 48, 1963, s. 6

25. Declarations under this Act may be made before the Minister, an officer of Customs or a Justice.

Declaration
by youths

26. No person shall knowingly receive a declaration under this Act by any person under the age of eighteen years.

s. 27

27. If the Governor-General shall so direct by proclamation any State Act relating to the inspection or testing of imported goods may be executed and enforced by the Customs.

State inspection laws

28. (1) The regulations may prescribe the days (which may include Sundays or holidays) on which, and the hours on those days (which may be different hours on different days) between which, officers are to be available to perform a specified function in every State or Territory, in a specified State or Territory or otherwise than in a specified State or Territory.

Working days and hours
Substituted by No. 110, 1980, s. 6

(2) Where a person requests a Collector to arrange for an officer to be available to perform a function at a place outside hours prescribed under sub-section (1) for the performance of that function at that place, the Collector may comply with that request, but the person shall, except in a case where the regulations provide otherwise, pay to the Customs such fee as the Minister determines, having regard to the cost of making officers available for the purposes of this section.

* * * * *

Section 29 repealed by No. 110, 1980, s. 6

PART III—CUSTOMS CONTROL EXAMINATION ENTRIES AND SECURITIES GENERALLY

30. Goods shall be subject to the control of the Customs as follows:

Customs control of goods

(a) As to all goods imported—from the time of importation until the goods are dealt with—

Amended by No. 36, 1910, s. 2; No. 104, 1968, s. 6; No. 64, 1981, s. 4

(i) in accordance with an entry of the goods for home consumption;

(ii) by virtue of an approval under section 71A;

(iii) by virtue of permission given under section 71B; or

(iv) by virtue of permission given under section 162A,

or until exportation to parts beyond the seas whichever shall first happen.

(b) As to all goods in respect of which a claim for drawback has been made before exportation of the goods to parts beyond the seas—from the time the claim is made until the goods are exported, the claim is withdrawn or the claim is disallowed, whichever first occurs.

(c) As to all goods subject to any export duty—from the time when the same are brought to any port or place for exportation until the payment of the duty.

(d) As to all goods for export, the exportation of which is subject to compliance with any condition or restriction under any Act or

s. 30

regulation—from the time the goods are made or prepared in, or are brought into, any prescribed place for export, until their exportation to parts beyond the seas.

Goods on ships and aircraft subject to Customs control

Amended by No. 12, 1923, s. 2; No. 108, 1952, s. 20; No. 64, 1981, s. 37

31. All goods on board any ship or aircraft from parts beyond the seas shall also be subject to the control of the Customs whilst the ship or aircraft is within the limits of any port or airport in Australia.

Right of examination

32. The control of the Customs especially includes the right of the Customs to examine all goods subject to such control.

Persons not to move goods subject to the control of the Customs

Substituted by No. 64, 1981, s. 5

33. (1) Except as authorized by this Act, a person shall not move, alter or interfere with goods that are subject to the control of the Customs.

Penalty: \$1,000.

(2) If a person who commits an offence against sub-section (1) does the act that constitutes the offence—

- (a)** on behalf of another person of whom he is an employee; or
- (b)** at the direction or with the consent or agreement (whether express or implied) of another person,

that other person commits an offence and is punishable, on conviction, by a fine not exceeding \$1,000.

(3) It is a defence to a charge arising under sub-section (2) if the person charged proves that he took reasonable precautions, and exercised due diligence, to prevent the person who is alleged by the charge to have moved, altered or interfered with goods in contravention of sub-section (1) from so moving, altering or interfering with those goods.

(4) For the purposes of this section, a director of a body corporate shall be deemed to be an employee of that body.

No claim for compensation for loss

34. The Customs shall not be liable for any loss or damage occasioned to any goods subject to the control of the Customs except by the neglect or wilful act of some officer.

Goods imported by post

Amended by No. 56, 1975, s. 38

35. Goods imported by post shall be subject to the control of the Customs equally with goods otherwise imported.

35A. (1) Where a person who has, or has been entrusted with, the possession, custody or control of dutiable goods which are subject to the control of the Customs—

- (a) fails to keep those goods safely; or
- (b) when so requested by a Collector, does not account for those goods to the satisfaction of a Collector,

that person shall, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the duty of Customs which would have been payable on those goods if they had been entered for home consumption on the day on which the demand was made.

(1A)³ Where—

- (a) dutiable goods subject to the control of the Customs are, by authority of an entry passed under this Act or of a permission given under section 40AA, taken from a place for removal to another place;
- (b) the goods are not, or part of the goods is not, delivered to that other place; and
- (c) when so requested by a Collector, the person who made the entry or to whom the permission was given, as the case may be, does not account for the goods, or for that part of the goods, as the case may be, to the satisfaction of a Collector,

the person shall, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the duty of Customs which would have been payable on the goods, or on that part of the goods, as the case may be, if they had been entered for home consumption on the day on which the demand was made.

(1B) Where—

- (a) dutiable goods subject to the control of the Customs are, by authority of a permission given under section 40AA, removed to a place other than a warehouse; and
- (b) the person to whom the permission was given fails to keep those goods safely or, when so requested by a Collector, does not account for the goods to the satisfaction of a Collector,

the person shall, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of the duty of Customs which would have been payable on those goods if they had been entered for home consumption on the day on which the demand was made.

(2) An amount payable under sub-section (1), (1A) or (1B) shall be a debt due to the Commonwealth and may be sued for and recovered in a court of competent jurisdiction by proceedings in the name of a Collector.

(3) In proceedings under the last preceding sub-section, a statement or averment in the complaint, claim or declaration of the Collector is evidence of the matter or matters so stated or averred.

Persons having possession of dutiable goods to keep them safely

Inserted by No. 37, 1957, s. 5.
Sub-section (1) amended by No. 104, 1968, s. 8; No. 28, 1974, s. 7; No. 154, 1977, s. 12

Inserted by No. 104, 1968, s. 8; amended by No. 28, 1974, s. 7; No. 154, 1977, s. 12

Inserted by No. 104, 1968, s. 8; amended by No. 28, 1974, s. 7; No. 154, 1977, s. 12

Amended by No. 104, 1968, s. 8; No. 28, 1974, s. 7; No. 154, 1977, s. 12

s. 35A

(4) This section does not affect the liability of a person arising under or by virtue of—

- (a) any other provision of this Act; or
- (b) a security given under this Act.

Entries

36.³ Entries may be made and passed for all goods subject to the control of the Customs.

Entry of goods

Sub-section (1) substituted by No. 104, 1968, s. 9

37. (1) Subject to this section, an entry in respect of goods shall be made by the delivery to a Collector of an entry specifying the goods and, on the delivery of the entry, the goods shall, for the purposes of this Act, be deemed to be entered.

Substituted by No. 104, 1968, s. 9

(1A) Where goods consigned to a port or airport in Australia have not been discharged at that port or airport or at any other port or airport in Australia, an entry for home consumption in respect of the goods shall not, except with the approval of a Collector, be delivered to a Collector at any port or airport other than the port or airport to which the goods are consigned.

Inserted by No. 104, 1968, s. 9

(1B) Where an entry for home consumption in respect of goods is delivered to a Collector at a port or airport before the arrival at the port or airport of the goods and the next succeeding sub-section does not apply in relation to the goods, the goods shall, for the purposes of this Act, be deemed to be entered for home consumption on the day on which the goods arrived at the port or airport.

Inserted by No. 104, 1968, s. 9

(1C) Where—

- (a) an entry for home consumption in respect of goods which are consigned to a port or airport in Australia (in this sub-section referred to as "the consignment port") but have not been discharged at that port or airport or at any other port or airport in Australia has been delivered to a Collector at a port or airport (in this sub-section referred to as "the entry port") other than the consignment port; and
- (b) the port or airport at which the goods are discharged (in this sub-section referred to as "the discharge port") is the consignment port or another port or airport other than the entry port,

the goods shall, for the purposes of this Act, be deemed to be entered for home consumption—

- (c) on the day on which the goods arrived at the discharge port; or
- (d) if the discharge port is not the consignment port but, before arriving at the discharge port, the goods passed through the consignment port—on the day on which the goods arrived at the consignment port.

s. 37

(2) At any time before the duty of Customs has been paid on goods, an entry made in respect of those goods may, with the consent of the Collector, be withdrawn.

Added by No. 66,
1954, s. 2

(2A)³ Where—

Inserted by
No. 54, 1959, s. 9

- (a) an entry for the removal of goods to a place specified in the entry has been made but not passed;
- (b) the Collector is of the opinion that, for the protection of the revenue of the Customs or for the purpose of ensuring compliance with the Customs Acts in relation to the goods, it is undesirable that the goods should be removed to that place; and
- (c) the Collector, by notice in writing to the owner of the goods, requires the entry to be withdrawn,

the owner of the goods shall forthwith comply with the notice and, for that purpose, shall be deemed to have the consent of the Collector to withdraw the entry.

(3) Where an entry for home consumption has been made in respect of goods, a person shall not purport to make a further entry in respect of those goods, or any part of those goods, unless the first-mentioned entry has been withdrawn in accordance with sub-section (2).

Added by No. 66,
1954, s. 2;
amended by
No. 54, 1959, s. 9;
No. 28, 1966, s. 4;
No. 28, 1974, s. 7;
No. 64, 1981,
s. 37.

Penalty: \$200.

38. Any person making any entry shall if required by the Collector answer questions relating to the goods referred to in the entry.

Person
making
entries to
answer
questions

39.³ Entries shall be passed by the Collector placing on the entry the word "Passed" and adding his signature thereto, and any entry so passed shall be warrant for dealing with the goods in accordance with the entry.

Collector to
pass entries
Amended by
No. 12, 1923, s. 7;
No. 7, 1934, s. 3

40.³ All goods in respect of which any entry has been made and passed shall forthwith be dealt with in accordance with the entry.

Goods to be
dealt with
according to
entry

Penalty: Two hundred and fifty dollars.

Amended by
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10

40AA. (1) A Collector may give permission in writing to a person specified in the permission to remove goods of a kind specified in the permission that are subject to the control of the Customs from a place so specified to another place so specified and, until the permission is revoked, the permission is authority for the person to remove goods of that kind that are subject to the control of the Customs accordingly.

Permission to
remove
goods subject
to Customs
control
without
entry

Inserted by
No. 104, 1968,
s. 10

(2) A Collector may give permission in writing to a person specified in the permission to remove goods subject to the control of the Customs that are specified in the permission from a place so specified to another

s. 40AA

place so specified, and the permission is authority for the person to remove those goods accordingly.

Amended by
No. 28, 1974, s. 7

(3) Permission under sub-section (1) or (2) may be given subject to the condition that the person to whom the permission is given complies with such requirements as are specified in the permission, being requirements that, in the opinion of the Collector, are necessary for the protection of the revenue of the Customs or for the purpose of ensuring compliance with the Customs Acts.

Amended by
No. 28, 1974, s. 7;
No. 64, 1981,
s. 37

(4) If, in relation to the removal of any goods, a person to whom permission has been given under sub-section (1) or (2) fails to comply with a requirement specified in the permission—

- (a) he is guilty of an offence against this Act punishable, upon conviction, by a penalty not exceeding \$1,000; and
- (b) if he failed to comply with the requirement before the goods were removed—the removal of the goods shall, for the purposes of paragraph (g) of section 229, be deemed not to have been authorized by this Act.

Amended by
No. 28, 1974, s. 7

(5) Where, in accordance with a permission given under sub-section (1) or (2), goods are removed to a place other than a warehouse, a Collector may, at any time before the goods cease to be subject to the control of the Customs, direct that the goods be moved from that place to a warehouse specified by him and, if default is made in complying with the direction, the Collector may cause the goods to be moved to that warehouse or to any other warehouse.

(6) A Collector has a lien on goods which he has caused to be moved to a warehouse under the last preceding sub-section for any expenses incurred by him in connexion with their removal to the warehouse and for any warehouse rent and charges incurred in relation to the goods.

Amended by
No. 28, 1974, s. 7

(7) The powers of a Collector under section 72 in relation to any goods are not affected by the removal of the goods to a place in accordance with a permission given under sub-section (1) or (2).

Goods
entered for
removal to
specified
place

Inserted by
No. 54, 1959,
s. 10

Sub-section (1)
amended by
No. 64, 1981,
s. 37

40A. (1) Where goods entered for removal to a place specified in an entry have been removed to that place in accordance with the entry, the goods shall—

- (a) if that place is a transit warehouse—within a period of 7 days after the arrival of the goods at that place; or
- (b) in any other case—forthwith,
be further entered—
 - (c) for home consumption;
 - (d) for warehousing;
 - (e) for export to parts beyond the seas; or
 - (f) for removal to another place specified in the further entry:

s. 40A

(2) Where goods entered for removal to a place specified in an entry—

- (a) are not removed to that place in accordance with the entry; or
- (b) are so removed but are not further entered in accordance with the last preceding sub-section,

a Collector may cause the goods to be removed to a warehouse or, if the goods are of a perishable nature and the Collector considers it expedient to do so without delay, the Collector may sell the goods.

(3) The Collector has a lien on the goods for any expenses incurred by him in connexion with their removal to a warehouse under the last preceding sub-section and for any warehouse rent and charges incurred in relation to the goods.

(4) Where a further entry has not been made in respect of goods after they have been removed to a warehouse under sub-section (2) and—

- (a) the goods are of a perishable nature; or
- (b) a period of not less than 6 months has elapsed after the goods were removed to the warehouse,

a Collector may sell the goods.

Amended by
No. 28, 1974, s. 2.
No. 64, 1981,
s. 37

40B. (1)³ A Collector shall not pass an entry for home consumption or for warehousing in respect of goods—

- (a) unless he has verified the particulars of the goods shown in the entry by reference to information contained in commercial documents relating to the goods that have been furnished to a Collector by the owner of the goods upon, or at any time after, the delivery of the entry to the Collector or by reference to other information, in writing, in respect of the goods that has been so furnished to a Collector; or

- (b) if he has been unable so to verify any of those particulars, or has so verified some, but not all, of those particulars, unless—

- (i) he is satisfied that the owner is unable to furnish, or that it would be unreasonable or unnecessary in the circumstances to require the owner to furnish, all the documents and other information that would be necessary to enable him to comply with paragraph (a) in respect of those particulars or of the particulars that he has been unable so to verify; and

- (ii) in the case of goods on which duty is imposed according to value—he is also satisfied as to the value for duty of the goods.

Production
of
commercial
documents
and other
information
Substituted by
No. 154, 1977,
s. 4

(2) At any time after an entry for home consumption or for warehousing in respect of goods has been delivered to a Collector, a Collector may, by notice in writing, require the owner of the goods at the time

s. 40B

the entry was so delivered to deliver to him the commercial documents in respect of the goods that are in his possession or under his control (including any such documents that had previously been delivered to a Collector in relation to the goods and had been returned to the owner), or to deliver to the Collector, in writing, such information relating to the particulars of the goods shown in the entry, being information of a kind specified in the notice, as is within the knowledge of the owner or as the owner is reasonably able to obtain.

(3)³ Where the owner of goods has been required to furnish documents or information under sub-section (2), a Collector shall not pass an entry for home consumption or warehousing in respect of the goods unless the requirement has been complied with or revoked.

(4) Where the owner of goods furnishes a commercial document to a Collector under this section, the Collector shall deal with the document in accordance with the regulations and then return the document to the owner.

(5) In this section, "commercial document", in relation to goods, means a document prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage of the goods, and includes an invoice or a bill of lading in respect of the goods or a receipt given on the sale of the goods.

Section 41
repealed by
No. 104, 1968,
s. 11

Right to
require
security

Sub-section (1)
amended by
No. 108, 1952,
s. 5

Inserted by
No. 45, 1981, s. 3

Added by No. 37,
1957, s. 6,
amended by
No. 28, 1974, s. 7

* * * * *

42. (1)³ The Customs shall have the right to require and take securities for compliance with this Act, for compliance with conditions or requirements to which the importation or exportation of goods is subject and generally for the protection of the revenue of the Customs, and pending the giving of the required security in relation to any goods subject to the control of the Customs may refuse to deliver the goods or to pass any entry relating thereto.

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

(2) The right of the Customs under the last preceding sub-section to require and take securities includes the right to require and take a security for a purpose or purposes for which security may be taken under that sub-section and for a purpose or purposes for which security may be taken under section 16 of the *Excise Act 1901-1957* and the succeeding provisions of this Part apply to and in relation to such a security in the same manner as they apply to and in relation to any other security required and taken under the last preceding sub-section.

(3) The rights of the Customs under this section may be exercised by a Collector on behalf of the Customs.

Added by No. 67, 1981, s. 2

43. A security shall be given in a manner and form approved by a Collector and may, subject to that approval, be by bond, guarantee, cash deposit or any other method, or by two or more different methods.

Form of security
Substituted by
No. 37, 1957, s. 7

44. When security is required for any particular purpose security may by the authority of the Comptroller be accepted to cover all transactions for such time and for such amount as the Comptroller may approve.

General bonds may be given

45. (1) All Customs securities may after the expiration of 3 years from the date thereof or from the time specified for the performance of the conditions thereof be cancelled by the Comptroller.

Cancellation of bonds
Sub-section (1) amended by
No. 64, 1981, s. 37

(2) A security in respect of any duty that may be payable on goods under section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act* 1975 shall be cancelled before the expiration of the prescribed period after the date of the security.

Substituted by
No. 67, 1981, s. 3

(3) In sub-section (2), "prescribed period" means—

Added by No. 67, 1981, s. 3

(a) in relation to a security in respect of any duty that may be payable on goods under section 8 or 9 of the *Customs Tariff (Anti-Dumping) Act* 1975—a period of 4 months or such longer period (not being a period exceeding 6 months) as is requested by the exporter of the goods concerned; or

(b) in any other case—a period of 4 months.

46. If the Collector shall not at any time be satisfied with the sufficiency of any security the Collector may require a fresh security and a fresh security shall be given accordingly.

New sureties

47. The form of Customs security in Schedule I hereto shall suffice for all the purpose of a bond or guarantee under this Act and without sealing shall bind its subscribers as if sealed and unless otherwise provided therein jointly and severally and for the full amount.

Form of Customs security

48. (1) Whenever any such Customs security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment for their stated liability against the persons appearing to have executed the same unless the defendants shall prove compliance with the condition or that the security was not executed by them or release or satisfaction.

Effect of Customs security

s. 48

Added by No. 12,
1923, s. 8

(2) If it appears to the Court that a non-compliance with a Customs security has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscribers shall not be deemed to have been released or discharged from liability by reason of—

- (a) an extension of time or other concession;
- (b) the Customs having consented to, or acquiesced in, a previous non-compliance with the condition; or
- (c) the Collector having failed to bring suit against the subscribers upon the occurrence of a previous non-compliance with the condition.

PART IV—THE IMPORTATION OF GOODS

Division 1A—Preliminary

Heading inserted
by No. 54, 1959,
s. 11

Importation
Amended by
No. 12, 1923, s. 2

49. For the purpose of securing the due importation of goods—

- (1) The ship or aircraft may be boarded.
- (2) The cargo shall be reported.
- (3) The goods shall be entered unshipped and may be examined.

Ships and
aircraft
deemed to be
imported
Inserted by
No. 110, 1980,
s. 7

49A. (1) Where—

- (a) a ship or an aircraft has entered Australia; and
- (b) a Collector, after making such inquiries as he thinks appropriate, has reason to believe that the ship or aircraft might have been imported into Australia,

he may serve, in accordance with sub-section (4), a notice in respect of the ship or aircraft stating that, if the ship or aircraft remains in Australia throughout the period of 30 days commencing on the day on which the notice was served, the ship or aircraft shall be deemed to have been imported into Australia and may be forfeited.

(2) Where a notice under sub-section (1) has been served in respect of a ship or an aircraft, a Collector, if he considers that, having regard to weather conditions or any other relevant matter, it is reasonable to do so, may extend the period specified in the notice by serving, in accordance with sub-section (4), a notice in respect of the ship or aircraft stating that that period has been extended and specifying the period by which it has been extended.

(3) Where a notice under sub-section (1) has been served in respect of a ship or an aircraft, a Collector may, before the expiration of the period specified in the notice, or, if that period has been extended under sub-section (2), that period as extended, revoke that notice by serving, in

accordance with sub-section (4), a notice in respect of the ship or aircraft stating that the first-mentioned notice is revoked.

(4) A Collector shall serve a notice under sub-section (1), (2) or (3) in respect of a ship or an aircraft by causing the notice to be affixed to a prominent part of the ship or aircraft.

(5) Where a Collector serves a notice under sub-section (1), (2) or (3) in respect of a ship or an aircraft, he shall, as soon as practicable after serving the notice, publish a copy of the notice in—

- (a) a newspaper circulating generally in the State or Territory in which the ship or aircraft is situated, or, in the case of a ship or seaplane that is not in a State or Territory, in the State or Territory that is adjacent to the place where the ship or seaplane is situated; and
- (b) if that newspaper does not circulate in the locality in which the ship or aircraft is situated—a newspaper (if any) circulating in that locality.

(6) Where a Collector who proposes to serve a notice under sub-section (1), (2) or (3) in respect of a ship or aircraft considers that the person (if any) in charge of the ship or aircraft is unlikely to be able to read the English language but is likely to be able to read another language, the Collector shall, when causing the notice to be affixed to the ship or aircraft, cause a translation of the notice into a language that that person is likely to be able to read to be affixed to the ship or aircraft as near as practicable to the notice.

(7) Where—

- (a) a Collector has served a notice under sub-section (1) in respect of a ship or aircraft;
- (b) the Collector has complied with sub-sections (5) and (6) in relation to the notice;
- (c) the notice has not been revoked under sub-section (3);
- (d) the ship or aircraft has remained in Australia throughout the period specified in the notice, or, if that period has been extended under sub-section (2), that period as extended; and
- (e) an entry has not been made in respect of the ship or aircraft during that period or that period as extended, as the case requires,

the ship or aircraft shall, for the purposes of this Act be deemed to have been imported into Australia on the expiration of that period or that period as extended, as the case requires.

(8) A reference in this section to Australia shall be read as including a reference to waters within the limits of any State or internal Territory.

s. 50

Division 1
substituted by
No. 108, 1952,
s. 7

Prohibition
of the
importation
of goods
Substituted by
No. 108, 1952,
s. 7

Division 1—Prohibited Imports

50. (1) The Governor-General may, by regulation, prohibit the importation of goods into Australia.

(2) The power conferred by the last preceding sub-section may be exercised—

- (a) by prohibiting the importation of goods absolutely;
- (b) by prohibiting the importation of goods from a specified place; or
- (c) by prohibiting the importation of goods unless specified conditions or restrictions are complied with:

(3) Without limiting the generality of paragraph (c) of sub-section (2), the regulations—

- (a) may provide that the importation of the goods is prohibited unless a licence, permission, consent or approval to import the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations; and
- (b) may make provision for and in relation to—
 - (i) the assignment of licences or permissions so granted or of licences or permissions included in a prescribed class of licences or permissions so granted;
 - (ii) the granting of a licence or permission to import goods subject to compliance with conditions or requirements, either before or after the importation of the goods, by the holder of the licence or permission at the time the goods are imported;
 - (iii) the surrender of a licence or permission to import goods and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to import goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to import goods; and
 - (iv) the revocation of a licence or permission that is granted subject to a condition or requirement to be complied with by a person for a failure by the person to comply with the condition or requirement, whether or not the person is charged with an offence against sub-section (4) in respect of the failure.

(3A) Without limiting the generality of sub-paragraph (ii) of paragraph (b) of sub-section (3), a condition referred to in that sub-paragraph may be a condition that, before the expiration of a period specified in the permission or that period as extended with the approval of the Collector, that person, or, if that person is a natural person who dies

Inserted by
No. 110, 1980,
s. 8

s. 50

before the expiration of that period or that period as extended, as the case may be, the legal personal representative of that person, shall export, or cause the exportation of, the goods from Australia.

(4) Where a licence or permission granted, after the commencement of this sub-section, under the regulations is subject to a condition or requirement to be complied with by a person, the person shall comply with the condition or requirement and, if he fails to do so, he is guilty of an offence punishable upon conviction—

Substituted by
No. 154, 1977,
s. 5

(a) if the licence or permission relates to goods that are not narcotic goods—by a fine not exceeding \$1,000; or

(b) if the licence or permission relates to goods that are narcotic goods—as provided by section 235.

51. (1) Goods, the importation of which is prohibited under section 50, are prohibited imports.

Prohibited
imports

Substituted by
No. 108, 1952,
s. 7

Sub-section (1)
amended by
No. 110, 1980,
s. 9

(2) Notwithstanding the generality of sub-section (1), ships, boats and aircraft the importation of which is prohibited under section 50 are prohibited imports if, and only if, they have been imported into Australia.

Added by
No. 110, 1980,
s. 9

* * * * *

Sections 52-57
repealed by
No. 108, 1952,
s. 7

Division 2—The Boarding of Ships and Aircraft

Heading
amended by
No. 12, 1923,
s. 10

58. The master of a ship or the pilot of any aircraft shall not suffer his ship or aircraft to enter any place other than a port or airport unless from stress of weather or other reasonable cause.

Ships and
aircraft to
enter ports or
airports

Penalty: \$1,000.

Amended by
No. 12, 1923, s. 2;
No. 108, 1952,
s. 20; No. 28,
1966, s. 4; No. 54,
1967, s. 10;
No. 64, 1981,
s. 37

59.³ (1) The master of every ship arriving within three nautical miles of the coast shall bring his ship to for boarding on being approached by or hailed or signalled from any vessel in the service of the Customs having hoisted the Customs flag, or from any vessel in the service of His Majesty or of the Commonwealth having hoisted the proper ensign and pendant.

Ship to bring
to and
aircraft to
land on being
signalled

Penalty: Five hundred dollars.

Sub-section (1)
amended by
No. 7, 1934, s. 6;
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 28,
1974, s. 7;
No. 154, 1977,
s. 12

s. 59

Added by No. 12,
1923, s. 11;
amended by
No. 7, 1934, s. 6;
No. 108, 1952,
s. 20; No. 28,
1966, s. 4; No. 54,
1967, s. 10;
No. 28, 1974, s. 7;
No. 154, 1977,
s. 12

(2) The pilot of every aircraft arriving within three nautical miles of the shore shall bring his aircraft to the nearest airport for boarding on being approached by or signalled from any vessel or aircraft in the service of His Majesty or of the Commonwealth having hoisted the proper ensign or pendant or displayed the proper signal.

Penalty: Five hundred dollars.

Boarding stations

Sub-section (1)
amended by
No. 48, 1963, s. 9;
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

60. (1) The master of every ship from parts beyond the seas bound to or calling at any port shall bring his ship to for boarding at a boarding station appointed for that port.

Penalty: \$250.

Substituted by
No. 37, 1957, s. 8;
amended by No.
28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

(2) The pilot of an aircraft from parts beyond the seas arriving in Australia shall not suffer the aircraft to land at any other airport until the aircraft has first landed—

- (a) at such airport for which a boarding station is appointed as is nearest to the place at which the aircraft entered Australia; or
- (b) at such other airport for which a boarding station is appointed as has been approved by the Comptroller, in writing, as an airport at which that aircraft, or a class of aircraft in which that aircraft is included, may land on arriving in Australia from parts beyond the seas.

Penalty: \$250.

Added by No. 37,
1957, s. 8;
amended by
No. 48, 1963, s. 9;
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

(3) The pilot of an aircraft engaged on an air service or flight between Australia and parts beyond the seas—

- (a) shall not suffer the aircraft to land at an airport for which a boarding station is not appointed; and
- (b) shall, as soon as practicable after the aircraft lands at an airport, bring the aircraft for boarding to a boarding station appointed for that airport.

Penalty: \$250.

Added by No. 37,
1957, s. 8

(4) It is a defence to a prosecution for an offence against a provision of either of the last two preceding sub-sections if the person charged proves that he was prevented from complying with the provision by stress of weather or other reasonable cause.

s. 61

61. The master of every ship or the pilot of every aircraft bringing to or landing at an airport for boarding shall by all reasonable means facilitate boarding by the officer.

Penalty: \$100.

Facility for boarding

Amended by No. 12, 1923, s. 2; No. 108, 1952, s. 20; No. 28, 1966, s. 4; No. 54, 1967, s. 10; No. 64, 1981, s. 37

62. When a ship has been brought to at a boarding station and boarded by an officer, the master of the ship shall, subject to any direction given under section 275A, bring the ship to the proper place of mooring or unloading, without touching at any other place, as quickly as it is practicable for him lawfully to do so.

Penalty: \$100.

Ships to come quickly to place of unloading

Substituted by No. 54, 1959, s. 12; amended by No. 48, 1963, s. 10; No. 28, 1966, s. 4; No. 54, 1967, s. 10; No. 28, 1974, s. 7; No. 64, 1981, s. 37

63. No ship or aircraft after arrival at the proper place of mooring or unloading shall except by authority or by direction of the harbour or aerial authority be removed therefrom before the discharge of the cargo intended to be discharged at the port or airport.

Penalty: \$100.

Ship or aircraft not to be moved without authority

Amended by No. 12, 1923, s. 2; No. 108, 1952, s. 20; No. 28, 1966, s. 4; No. 54, 1967, s. 10; No. 64, 1981, s. 37

Division 3—The Report of the Cargo

64.³ As to every ship or aircraft arriving from parts beyond the seas—

- (a) the master, owner or pilot shall, within one day after arrival at any port or airport, make report of the ship or aircraft and her cargo by delivering to the Collector an Inward Manifest in duplicate of goods for that port or airport;
- (b) the master and owner of the ship or the pilot and owner of the aircraft shall severally answer questions relating to the ship or aircraft and her cargo, crew, passengers, stores and voyage; and
- (c) the master and owner or the pilot and owner shall severally produce documents relating to the ship or aircraft and her cargo.

Penalty: \$500.

Report of cargo

Substituted by No. 12, 1923, s. 13; amended by No. 108, 1952, s. 20; No. 28, 1966, s. 4; No. 54, 1967, s. 10; No. 64, 1981, s. 37

s. 65

Master or
pilot of
wrecked ship
or aircraft to
report

Sub-section (1)
amended by
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

65. (1) When any ship is lost or wrecked upon the coast the master or owner shall without any unnecessary delay make report of the ship and cargo by delivering to the Collector a Manifest so far as it may be possible for him to do so at the Customs house nearest to the place where the ship was lost or wrecked or at the chief Customs house of the State where the ship was lost or wrecked.

Penalty: \$100.

Added by No. 12,
1923, s. 14;
amended by
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 28,
1974, s. 7; No. 64,
1981, s. 37

(2) When any aircraft arriving from parts beyond the seas is lost or wrecked at any place within Australia, the pilot or owner shall, without any unnecessary delay, make report of the aircraft and cargo by delivering to the Collector a Manifest, as far as it may be possible for him to do so, at the Customs House nearest to the place where the aircraft was lost or wrecked.

Penalty: \$100.

Goods
derelict to be
delivered to
officer

Amended by
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

66. Whoever has any dutiable goods derelict flotsam jetsam lagan or wreck in his possession shall deliver the same to an officer without unnecessary delay.

Penalty: \$100.

Interference
with derelict
goods

Amended by
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

67. No person shall except by authority unnecessarily move alter or interfere with any goods derelict flotsam jetsam lagan or wreck.

Penalty: \$100.

Division 4—The Entry, Unshipment, Landing, and Examination of Goods

Entries

Substituted by
No. 54, 1959,
s. 13; amended by
No. 104, 1968,
s. 12

68. Subject to this Act, imported goods shall be entered—

- (a) for home consumption;
- (b) for warehousing;
- (c) for transshipment; or
- (d) for removal to a place specified in the entry.

Sight Entry

69. If the owner cannot immediately supply the full particulars for making an entry and shall make a declaration to that effect before the Collector he may make a Sight Entry.

Passing of
Sight Entry

70.³ A Sight Entry on being passed by the Collector shall be warrant for the landing and examination of the goods.

s. 71

71.³ (1) The owner of the goods included in a sight entry shall, within seven days after the passing of the entry, or within such further period as the Collector allows, make complete entry thereof.

Complete entry of goods after sight entry
Substituted by No. 36, 1910, s. 3
Sub-section (1) amended by No. 7, 1934, s. 7

(2) A complete entry of the goods included in a sight entry shall be made in same manner as if the sight entry had not been made.

71A. (1)³ A Collector may approve the delivery for home consumption, without entry, of prescribed goods, and prescribed goods so approved may be delivered for home consumption notwithstanding that an entry of the goods for home consumption has not been made and passed under this Act.

Permission to deliver prescribed goods for home consumption without entry
Inserted by No. 104, 1968, s. 13

(2) Goods that are delivered for home consumption by authority of the last preceding sub-section shall, for the purposes of this Act, be deemed to be entered for home consumption on the day the approval of the Collector was granted in relation to the goods.

(3) In this section, "prescribed goods" means imported goods subject to the control of the Customs that are included in a class of goods prescribed for the purposes of this section.

71B. (1)³ A Collector may give permission in writing to a person specified in the permission to deliver for home consumption from a place specified in the permission goods of a kind so specified that are subject to the control of the Customs, and, until the permission is revoked, the permission is authority for that person to deliver for home consumption from that place goods of that kind that are subject to the control of the Customs (other than goods that a Collector has directed are not to be delivered for home consumption under this section or goods that may be delivered for home consumption by authority of sub-section (1) of the last preceding section) notwithstanding that an entry of the goods for home consumption has not been made and passed under this Act.

Permission to deliver goods of approved kind for home consumption without entry
Inserted by No. 104, 1968, s. 13

(2) Goods delivered for home consumption by authority of the last preceding sub-section shall, for the purposes of this Act, be deemed to be entered for home consumption on the day on which they are so delivered.

(3) Permission under sub-section (1) may be given subject to the condition that the person to whom the permission is given complies with such requirements as are specified in the permission, being requirements that, in the opinion of the Collector, are necessary for the protection of the revenue of the Customs or for the purpose of ensuring compliance with the Customs Act.

Amended by No. 28, 1974, s. 7

(4) If, in relation to the delivery for home consumption of any goods, a person to whom permission has been given under sub-section (1) fails to comply with a requirement specified in the permission—

Amended by No. 28, 1974, s. 7
No. 64, 1981, s. 37

s. 71B

- (a) he is guilty of an offence against this Act punishable, upon conviction, by a penalty not exceeding \$1,000; and
- (b) if he failed to comply with the requirement before the goods were delivered for home consumption, the removal of the goods for the purposes of the delivery shall, for the purposes of paragraph (g) of section 229, be deemed not to have been authorized by this Act.

Added by No. 28,
1974, s. 4

(5) Subject to sub-section (6), a permission under sub-section (1) does not authorize the delivery of goods in respect of which a quota order under sub-section (3) of section 132B is in force at any time if the Customs would have the right under sub-section (8) of that section, if the goods were entered for home consumption under sub-section (1) of section 37 at that time, to take security with respect to the goods for the protection of the revenue of the Customs.

Added by No. 28,
1974, s. 4

(6) For the purposes of sub-section (5), a quota order, or a variation of a quota order, shall be deemed not to be in force unless it has been served on the person to whom the quota order applies or has otherwise been brought to the notice of that person.

Entry within
seven days

Amended by
No. 12, 1923, s. 2;
No. 111, 1960,
s. 3; No. 104,
1968, s. 14

72.³ Entries shall be made of the whole of any cargo unshipped or to be unshipped (other than cargo consisting of goods that, under this Act, may be delivered for home consumption otherwise than in pursuance of an entry for home consumption) within such respective times after the arrival of the ship or aircraft at the port or airport as may be prescribed or within such further time if any as the Collector may see fit to allow; and so that if the goods are placed in quarantine seven days at the least shall be allowed for entry after their release from quarantine.

- (a) If default shall be made in the entry of any goods pursuant to this section the Collector may cause the goods to be removed to a warehouse; and if the goods are not claimed and entries passed therefor within six months after such removal the goods may be sold by the Collector.
- (b) If the goods are of a perishable nature they may be sold at any time the Collector thinks fit either before or after warehousing.

Breaking
bulk

Amended by
No. 12, 1923, s. 2;
No. 7, 1934, s. 8;
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, ss. 19 and
37

73.³ The bulk cargo of a ship or aircraft arriving within 12 nautical miles of the coast shall not be broken except with the permission of the Collector or as regards goods for which entry has been passed.

Penalty: \$500.

Authority for
unshipment

Amended by
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

74.³ Except as prescribed goods may be unshipped only pursuant to—

- (1) A Collector's permit; or
- (2) An entry passed.

Penalty: \$500.

s. 76

* * * * *

Section 75
repealed by
No. 104, 1968,
s. 15

Goods
landed on
permit at
ship's risk,
&c.

Amended by
No. 12, 1923, s. 2

76. Goods unshipped and landed under a Collector's permit shall be placed by and at the expense of the master or owner of the ship or the pilot or owner of the aircraft from which they were unshipped in a place of security approved by the Collector, and shall until lawfully removed therefrom be at the risk of the master or owner of the ship or the pilot or owner of the aircraft as if they had not been unshipped.

77. Any goods may by authority be repacked or skipped on the wharf.

Repacking
on wharf

PART V—WAREHOUSES

Part V
substituted by
No. 110, 1980,
s. 10

78. (1) In this Part, unless the contrary intention appears—

“place” includes an area, a building and a part of a building;

“warehouse”, in relation to a warehouse licence, means the warehouse to which the licence relates;

“warehouse licence” means a licence granted under section 79 and includes such a licence that has been renewed under section 84.

Interpretation

Substituted by
No. 110, 1980,
s. 10

(2) A reference in this Part to the Comptroller shall be read as including a reference to a Collector of Customs for a State or Territory.

(3) For the purposes of this Part, a person shall be taken to participate in the management or control of a warehouse if—

(a) he has authority to direct the operations of the warehouse or to direct activities in the warehouse, the removal of goods from the warehouse, or another important part of the operations of the warehouse; or

(b) he has authority to direct a person who has authority referred to in paragraph (a) in the exercise of that authority.

79. (1) Subject to this Part, the Comptroller may grant a person or partnership a licence in writing, to be known as a warehouse licence, to use a place described in the licence for warehousing goods.

Warehouse
licences
Substituted by
No. 110, 1980,
s. 10

(2) A warehouse licence may be a licence to use a place for warehousing goods generally, goods included in a specified class or specified classes of goods or goods other than goods included in a specified class or specified classes of goods.

(3) A warehouse licence may authorize manufacturing, processing, trading or other activities specified in the licence to be carried on in the warehouse.

s. 80

Applications
for
warehouse
licences

Substituted by
No. 110, 1980,
s. 10

80. An application for a warehouse licence shall—

- (a) be in writing;
- (b) contain a description of the place in relation to which the licence is sought;
- (c) specify the kinds of goods that would be warehoused in that place if it were a warehouse;
- (d) set out the name and address of each person whom the Comptroller is required to consider for the purposes of paragraph (a), (b), (c) or (d) of sub-section (1) of section 81;
- (e) set out such particulars of the matters that the Comptroller is required to consider for the purposes of paragraph (e), (f) or (g) of sub-section (1) of section 81 as will enable him adequately to consider those matters; and
- (f) contain such other information as is prescribed.

Requirements
for grant of
warehouse
licence

Substituted by
No. 110, 1980,
s. 10

81. (1) The Comptroller shall not grant a warehouse licence if, in his opinion—

- (a) where the applicant is a natural person—the applicant is not a fit and proper person to hold a warehouse licence;
- (b) where the applicant is a partnership—any of the partners is not a fit and proper person to be a member of a partnership holding a warehouse licence;
- (c) where the applicant is a company—any director, officer or shareholder of the company who would participate in the management or control of the warehouse is not a fit and proper person so to participate;
- (d) an employee of the applicant who would participate in the management or control of the warehouse is not a fit and proper person so to participate;
- (e) the physical security of the place in relation to which the licence is sought is not adequate having regard to—
 - (i) the kinds of goods that would be kept in that place if it were a warehouse; or
 - (ii) the procedures and methods that would be adopted by the applicant to ensure the security of goods in the place if it were a warehouse;
- (f) the plant and equipment that would be used in relation to goods in the place in relation to which the licence is sought if it were a warehouse are not suitable having regard to the nature of those goods and that place; or
- (g) the books of account or records that would be kept in relation to the place in relation to which the licence is sought if it were a warehouse would not be suitable to enable the Customs adequately to audit those books or records.

(2) The Comptroller shall, in determining whether a person is a fit and proper person for the purposes of paragraph (a), (b), (c) or (d) of sub-section (1), have regard to—

- (a) any conviction of the person for an offence against this Act committed within the 10 years immediately preceding the making of the application;
- (b) any conviction of the person for an offence under a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of one year or longer, being an offence committed within the 10 years immediately preceding the making of the application;
- (c) whether the person is an undischarged bankrupt;
- (d) any misleading statement made in the application by or in relation to the person; and
- (e) where any statement by the person in the application was false—whether the person knew that the statement was false.

82. (1) A warehouse licence is subject to the condition that, if—

- (a) a person not described in the application for the licence as participating in the management or control of the warehouse commences so to participate;
- (b) in the case of a licence held by a partnership—there is a change in the membership of the partnership;
- (c) a person who participates in the management or control of the warehouse, the holder of the licence or, in the case of a licence held by a partnership, a member of the partnership, is convicted of an offence referred to in paragraph (a) or (b) of sub-section (2) of section 81 or becomes bankrupt;
- (d) there is a substantial change in a matter affecting the physical security of the warehouse;
- (e) there is a substantial change in plant or equipment used in relation to goods in the warehouse; or
- (f) there is a substantial change in the keeping of accounts or records kept in relation to the warehouse,

the holder of the licence shall, within 30 days after the occurrence of the event, change, conviction or bankruptcy, as the case requires, give the Comptroller particulars in writing of that event, change, conviction or bankruptcy, as the case requires.

(2) A warehouse licence is subject to such other conditions (if any) as are prescribed.

(3) A warehouse licence is subject to such other conditions (if any) as are specified in the licence, being conditions considered by the Comptroller to be necessary or desirable for the protection of the revenue.

Conditions of
warehouse
licences

Repealed by
No. 80, 1950, s. 3,
inserted by
No. 110, 1980,
s. 10

s. 82

- (4) The conditions specified in a warehouse licence may include—
- (a) conditions specifying the persons or classes of persons whose goods may be warehoused in the warehouse; and
 - (b) conditions limiting the operations that may be performed upon, or in relation to, goods in the warehouse.

(5) The Comptroller may, upon application by the holder of a warehouse licence and production of the licence, vary the conditions specified in the licence by making an alteration to, or an endorsement on, the licence.

**Duration of
warehouse
licence**

Repealed by
No. 104, 1968,
s. 16; inserted by
No. 110, 1980,
s. 10

83. A warehouse licence—

- (a) comes into force on a date specified in the licence or, if no date is so specified, the date on which the licence is granted; and
- (b) subject to this Part, remains in force until 30 June next following the grant of the licence but may be renewed in accordance with section 84.

**Renewal of
warehouse
licence**

Repealed by
No. 104, 1968,
s. 16; inserted by
No. 110, 1980,
s. 10

84. (1) The Comptroller may, by writing, renew a warehouse licence on the application, in writing, of the holder of the licence.

(2) Where a warehouse licence is renewed, the Comptroller may specify conditions different from those specified in the original licence.

(3) The Comptroller may refuse to renew a licence if he is satisfied that, if the licence were renewed, he would be entitled to cancel the licence.

(4) Subject to this Part, a warehouse licence that has been renewed continues in force for 12 months but may be further renewed.

**Fees for
warehouse
licences**

Substituted by
No. 110, 1980,
s. 10

85. (1) Such fees as are prescribed are payable in respect of warehouse licences.

(2) Regulations for the purposes of sub-section (1) may prescribe—

- (a) annual fees in respect of warehouse licences;
- (b) fees calculated in accordance with the duration of warehouse licences;
- (c) a fee for each transaction, or each transaction in a class of transactions, involving the movement of goods into or out of the warehouse to which a warehouse licence relates; and
- (d) a fee calculated by reference to the volume or value of transactions, or of a specific class of transactions, relating to goods in the warehouse to which a warehouse licence relates.

(3) Different fees may be prescribed in relation to warehouse licences subject to different conditions or in relation to warehouse licences for warehouses of different kinds.

86. (1) The Comptroller may give notice in accordance with this section to the holder of a warehouse licence if he has reasonable grounds for believing that—

Suspension of warehouse licences

Repealed by No. 104, 1968, s. 17; inserted by No. 110, 1980, s. 10

- (a) the physical security of the warehouse is no longer adequate having regard to the matters referred to in paragraph (e) of subsection (1) of section 81;
- (b) the plant and equipment used in the warehouse are such that the protection of the revenue in relation to goods in the warehouse is inadequate;
- (c) where the licence is held by a natural person—that person is not a fit and proper person to hold a warehouse licence;
- (d) where the licence is held by a partnership—a member of the partnership is not a fit and proper person to be a member of a partnership holding a warehouse licence;
- (e) where the licence is held by a company—a director, officer or shareholder of the company who participates in the management or control of the warehouse is not a fit and proper person so to participate;
- (f) an employee of the holder of the licence, being an employee who participates in the management or control of the warehouse, is not a fit and proper person so to participate;
- (g) a condition to which the licence is subject has not been complied with; or
- (h) a fee payable in respect of a licence is unpaid and has been unpaid for 28 days after the day on which it became payable,

or it otherwise appears to him to be necessary for the protection of the revenue to give the notice.

(2) Notice in accordance with this section to the holder of a warehouse licence shall be in writing and shall be—

- (a) served, either personally or by post, on the holder of the licence; or
- (b) served personally on a person who, at the time of service, apparently participates in the management or control of the warehouse.

(3) A notice in accordance with this section to the holder of a warehouse licence—

- (a) shall state that, if the holder of the licence wishes to prevent the cancellation of the licence, he may, within 7 days after the day on which the notice was served, furnish to the Comptroller at an address specified in the notice a written statement showing cause why the licence should not be cancelled; and
- (b) may, if it appears to the Comptroller to be necessary for the protection of the revenue to do so, state that the licence is suspended,

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and, if the notice states that the licence is suspended, that licence is suspended on and from the service of the notice.

(4) A notice in accordance with this section to the holder of a warehouse licence shall—

- (a) state the ground or grounds on which the notice is given; and
- (b) if the notice states that the licence is suspended—also state that any person whose interests are affected by the suspension may make an application to the Administrative Appeals Tribunal for a review of the decision to suspend the licence.

(5) Where a warehouse licence is suspended under this section, the Comptroller—

- (a) may at any time revoke the suspension; and
- (b) if the licence has not been cancelled within 28 days after the day on which the licence was suspended—shall revoke the suspension.

(6) Subject to sub-section (7), during a period in which a warehouse licence is suspended under this section, a person shall not use the warehouse for warehousing goods.

Penalty: \$1,000.

(7) Notwithstanding sub-section (6), during a period in which a warehouse licence is suspended under this section, a Collector may—

- (a) permit goods to be placed in the warehouse;
- (b) permit a process to be carried out in the warehouse;
- (c) permit the removal of goods from the warehouse, including the removal of goods to another warehouse;
- (d) by notice in writing to the owner of goods in the warehouse, require him to remove his goods to another warehouse approved by the Collector;
- (e) take such control of the warehouse or all or any goods in the warehouse as may be necessary for the protection of the revenue; and
- (f) by notice in writing to the holder of the licence, require him to pay to the Customs in respect of the services of officers required as the result of the suspension, including services relating to the enforcement of the suspension, the supervision of activities in relation to the warehouse permitted by a Collector, the stocktaking of goods in the warehouse or the reconciliation of records relating to such goods, such fee as the Minister determines, having regard to the cost of the services.

(8) If an amount that the holder of a licence is required to pay in accordance with a notice under paragraph (f) of sub-section (7) is not paid,

Cancellation
of warehouse
licences
Substituted by
No. 110, 1980,
s. 10

that amount may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

87. (1) The Comptroller may cancel a warehouse licence if—

- (a) he is satisfied in relation to the licence as to any of the matters mentioned in paragraphs (a) to (h) (inclusive) of sub-section (1) of section 86; or
- (b) he is satisfied on any other grounds that cancellation of the licence is necessary for the protection of the revenue.

(2) The Comptroller shall cancel a warehouse licence under sub-section (1) by notice in writing—

- (a) served, either personally or by post, on the holder of the licence; or
- (b) served personally on a person who, at the time of service, apparently participates in the management or control of the warehouse.

(3) A notice under sub-section (2) of the cancellation of a warehouse licence shall set out the ground or grounds of the cancellation of the licence and shall state that any person whose interests are affected by the cancellation may make an application to the Administrative Appeals Tribunal for a review of the decision to cancel the licence.

(4) Subject to sub-section (5), where the Comptroller cancels a warehouse licence, he shall by notice—

- (a) published by being displayed on a public Notice Board in the Customs House or other office of the Customs nearest to the warehouse;
- (b) published in the *Gazette*; and
- (c) published in a newspaper circulating in the locality in which the warehouse is situated,

inform the owners of goods in the place that was the warehouse—

- (d) that they are required, within a time specified in the notice or any further time allowed by the Comptroller, to—
 - (i) pay to the Collector duty payable in respect of their goods in the warehouse; or
 - (ii) remove their goods in the warehouse to another place in accordance with permission obtained from the Collector; and
- (e) that, if they do not comply with the requirements of the notice, their goods in that place will be sold.

(5) Where the Comptroller who has cancelled a warehouse licence under this section is satisfied that all the goods in the place that was the warehouse are the property of the person who held the licence, the notice

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referred to in sub-section (4) need not be published as mentioned in that sub-section but shall be—

- (a) served, either personally or by post, on that person; or
- (b) served personally on a person who, at the time of the cancellation of the licence, apparently participated in the management or control of the place that was the warehouse.

(6) Where the owner of goods to which a notice under sub-section (4) applies fails to comply with the requirements of the notice within the time specified in the notice or any further time allowed by the Comptroller, the goods may be sold by a Collector.

(7) Where a warehouse licence is cancelled under this section, the holder of the licence shall, if requested by the Comptroller to do so, surrender the licence to the Comptroller.

Penalty: \$100.

Service of
notices
Repealed by
No. 104, 1968,
s. 18; inserted by
No. 110, 1980,
s. 10

88. For the purpose of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a notice under this Part on a person who holds or held a warehouse licence, such a notice posted as a letter addressed to the person at the address of the place that is or was the warehouse shall be deemed to be properly addressed.

Death of
licence
holder
Substituted by
No. 110, 1980,
s. 10

89. If the holder of a warehouse licence, being a natural person, dies, the licence shall be deemed to be transferred to his legal personal representative.

Obligations
of holders of
warehouse
licences

Repealed by
No. 21, 1906, s. 5;
inserted by
No. 110, 1980,
s. 10

90. The holder of a warehouse licence shall—

- (a) stack and arrange goods in the warehouse so that officers have reasonable access to, and are able to examine, the goods;
- (b) provide officers with adequate space and facilities for the examination of goods in the warehouse and with devices for accurately measuring and weighing such goods;
- (c) if required by a Collector, provide adequate office space, and a telephone service, for the official use of officers performing duties at the warehouse; and
- (d) provide sufficient labour and materials for use by a Collector in dealing with goods in the warehouse for the purposes of this Act.

Penalty: \$250.

Access to
warehouses

Repealed by
No. 21, 1906, s. 5;
inserted by
No. 110, 1980,
s. 10

91. A Collector may, at any time, gain access to and enter, if necessary by force, any warehouse and examine any goods in the warehouse.

s. 92

92. A Collector may, in accordance with the regulations, permit the owner of warehoused goods to sort, bottle, pack or repack those goods.

Repacking in warehouse
Substituted by
No. 110, 1980,
s. 10

* * * * *

Section 92A
repealed by
No. 110, 1980,
s. 10

93. Where—

Regauging,
& c., of goods
Substituted by
No. 110, 1980,
s. 10

(a) any warehoused goods are examined by an officer or by the owner of the goods with the approval of an officer; and

(b) the examination shows that there has been a decrease in the volume or weight of the goods since they were first entered,

the volume or weight of the goods shall, for the purposes of this Act or any other law of the Commonwealth, be taken to be—

(c) except where paragraph (d) applies—the volume or weight found on that examination; or

(d) where, in the opinion of a Collector, that decrease is excessive—the volume or weight shown in the original entry reduced to an extent that the Collector considers appropriate,

and duty in respect of the goods is payable accordingly.

94. (1) Where a Collector is satisfied that the value of any warehoused goods is less than the amount of duty payable in respect of the goods, he may, if requested by the owner of the goods to do so, destroy the goods and remit the duty.

Goods not
worth duty
may be
destroyed
Substituted by
No. 110, 1980,
s. 10

(2) The destruction of warehoused goods under sub-section (1) does not affect any liability of the owner of the goods to pay the holder of a warehouse licence any rent or charges payable in respect of the goods.

95. Where a Collector is satisfied that warehoused goods that have been valued for the purposes of this Act in accordance with section 154 have deteriorated in value as the result of accidental damage, the Collector may, if requested by the owner of the goods to do so, cancel that valuation and, for the purposes of this Act and in accordance with section 154, revalue those goods as at the time of the revaluation.

Revaluation
Substituted by
No. 110, 1980,
s. 10

96. (1) Where any rent or charges in respect of warehoused goods has or have been in arrears for—

(a) except where paragraph (b) applies—6 months; or

(b) where the goods are the unclaimed baggage of a passenger or member of the crew of a ship or aircraft—30 days,

Arrears of
warehouse
charges
Substituted by
No. 110, 1980,
s. 10

a Collector may sell the goods.

(2) In this section, “member of the crew” includes—

(a) in relation to a ship—the master, a mate or an engineer of the ship; and

(b) in relation to an aircraft—the pilot of the aircraft.

s. 97

Goods for
public
exhibition
Substituted by
No. 110, 1980,
s. 10

97. (1) A Collector may, by writing signed by him, grant to the owner of warehoused goods permission to take those goods out of the warehouse for the purpose of public exhibition, testing or a similar purpose without entering the goods for home consumption.

(2) Permission under sub-section (1) shall specify the period during which the owner of the relevant goods may keep the goods outside the warehouse.

(3) The owner of goods in relation to which permission has been granted under sub-section (1) shall not take the goods out of the warehouse unless security has been given to the satisfaction of the Collector for the payment, in the event of the goods not being returned to the warehouse before the expiration of the period specified in the permission, of the duty that would have been payable if the goods had been entered for home consumption on the day on which they were taken out of the warehouse.

Penalty: \$1,000.

Goods
manufactured
in warehouse
Substituted by
No. 110, 1980,
s. 10

98. Subject to the regulations, where a warehouse licence authorizes manufacturing in the warehouse, goods may be manufactured in the warehouse in accordance with, and subject to any relevant conditions of, the licence, and goods so manufactured may, subject to the payment of any duty in respect of the goods the payment of which is required by the regulations, be delivered for home consumption.

Entry of
warehoused
goods
Substituted by
No. 110, 1980,
s. 10

99. Warehoused goods may be entered—

- (a) for home consumption; or
- (b) for export to parts beyond the seas.

Constructive
warehousing
Substituted by
No. 110, 1980,
s. 10

100. (1) Where goods have been entered for warehousing, they may, without being warehoused in accordance with the entry, be further entered in accordance with section 99 and be dealt with in accordance with that further entry as if they had been so warehoused.

(2) Where a person makes a further entry in accordance with sub-section (1) in respect of goods that have been entered for warehousing, he shall—

- (a) at the time of lodging the further entry, give the Collector particulars of the entry for warehousing; and
- (b) as soon as practicable, give particulars of the further entry to the holder of the warehouse licence relating to the warehouse in which the goods were intended to be warehoused in accordance with the entry for warehousing.

Penalty: \$500.

s. 101

101. Where the owner of goods receives written authority for warehousing goods in pursuance of an entry for warehousing or written permission under this Act to warehouse the goods, he shall, as soon as practicable, before the goods are delivered to the warehouse nominated in the authority or permission, deliver the authority or permission to the holder of the warehouse licence by leaving it at the warehouse with a person apparently participating in the management or control of the warehouse.

Delivery of warehousing authority

Substituted by No. 110, 1980, s. 10

Penalty: \$500.

102. (1) Where goods are delivered to a warehouse but documents relating to those goods required to be delivered to the holder of the warehouse licence in accordance with this Act are not so delivered or such documents are so delivered but do not contain sufficient information to enable the holder to make a record relating to the goods that he is required to make under this Act, the holder shall, as soon as practicable, inform a Collector of the non-delivery or inadequacy of those documents, as the case may be.

Holder of licence to inform Collector of certain matters

Substituted by No. 110, 1980, s. 10

(2) Where documents relating to goods to be warehoused in a warehouse are delivered to the holder of the warehouse licence in accordance with this Act but those goods are not received at the warehouse within 7 days after the delivery of the documents, the holder shall, as soon as practicable, inform a Collector of the non-delivery of those goods.

Penalty: \$500.

* * * * *

Sections 103-107 repealed by No. 110, 1980, s. 10; section 108 repealed by No. 48, 1963, s. 11; sections 109 and 110 repealed by No. 110, 1980, s. 10

PART VI—THE EXPORTATION OF GOODS

* * * * *

Section 111 repealed by No. 108, 1952, s. 9

112. (1) The Governor-General may, by regulation, prohibit the exportation of goods from Australia.

Prohibited exports

Substituted by No. 56, 1951, s. 5

(2) The power conferred by sub-section (1) may be exercised—

Amended by No. 154, 1977, s. 6

- (a) by prohibiting the exportation of goods absolutely;
- (b) by prohibiting the exportation of goods to a specified place; or
- (c) by prohibiting the exportation of goods unless specified conditions or restrictions are complied with.

s. 112

Inserted by
No. 154, 1977,
s. 6

(2A) Without limiting the generality of paragraph (c) of sub-section (2), the regulations—

- (a) may provide that the exportation of the goods is prohibited unless a licence, permission, consent or approval to export the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations; and
- (b) may make provision for and in relation to—
 - (i) the assignment of licences or permissions so granted or of licences or permissions included in a prescribed class of licences or permissions so granted;
 - (ii) the granting of a licence or permission to export goods subject to compliance with conditions or requirements, either before or after the exportation of the goods, by the holder of the licence or permission at the time the goods are exported;
 - (iii) the surrender of a licence or permission to export goods and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to export goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to export goods; and
 - (iv) the revocation of a licence or permission that is granted subject to a condition or requirement to be complied with by a person for failure by the person to comply with the condition or requirement, whether or not the person is charged with an offence against sub-section (2B) in respect of the failure.

Inserted by
No. 154, 1977,
s. 6

(2B) Where a licence or permission granted, after the commencement of this sub-section, under the regulations is subject to a condition or requirement to be complied with by a person, the person shall comply with the condition or requirement and, if he fails to do so, he is guilty of an offence punishable upon conviction—

- (a) if the licence or permission relates to goods that are not narcotic goods—by a fine not exceeding \$1,000; or
- (b) if the licence or permission relates to goods that are narcotic goods—as provided by section 235.

(3) Goods the exportation of which is prohibited under this section are prohibited exports.

s. 113

113. Except by the permission of the Collector no goods subject to the control of the Customs shall be exported in any ship of less than 50 tons gross register.

Penalty: \$500.

Size of exporting vessel

Amended by No. 28, 1966, s. 4; No. 54, 1967, s. 10; No. 64, 1981, s. 37

114. (1) Subject to this Act, the owner of goods intended for export shall enter the goods for export before the goods are taken on board the ship or aircraft in which they are to be exported.

Entry of goods for export

Substituted by No. 154, 1977, s. 7

(2) Where a ship or aircraft is to be exported otherwise than in another ship or aircraft, it shall be entered for export before it leaves the place of exportation:

(3) Sub-section (1) does not apply in relation to—

(a) goods that are excisable goods within the meaning of the *Excise Act* 1901;

(b) goods which, under the regulations, are exempt from this section; or

(c) goods to which section 114A applies.

(4) The regulations may require a person who exports, or proposes to export, goods referred to in paragraph (3) (b) to furnish in writing to a Collector, in accordance with the regulations, such information in respect of the goods as is prescribed.

114A. (1) The Minister may, by notice published in the *Gazette*, declare that goods, or goods included in a specified class of goods, owned by a specified person that are intended for export from any place or from a specified place to any place or to a specified place are goods to which this section applies.

Returns relating to goods exported

Substituted by No. 154, 1977, s. 7

(2) A notice under sub-section (1) does not extend to warehoused goods owned by the person to whom the notice relates unless it is expressed so to extend.

(3) A person, being the owner of goods to which this section applies, shall, within 7 days after the expiration of a period approved by the Collector in writing in respect of the person for the purposes of this section, furnish 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 goods to which this section applies that were exported by the person during the period.

Penalty: \$200.

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Authority for
exportation
of goods to be
given

Repeated by
No. 104, 1968,
s. 23; inserted by
No. 154, 1977,
s. 7

Short-shipped
goods

Amended by
No. 12, 1923, s. 2;
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

Documents
and security

Certificate of
Clearance

Amended by
No. 12, 1923, s. 2;
No. 108, 1952,
s. 20; No. 28,
1966, s. 4; No. 54,
1967, s. 10;
No. 64, 1981,
s. 37

Requisites
for obtaining
clearance

Substituted by
No. 12, 1923,
s. 20

Sub-section (1)
amended by
No. 48, 1963,
s. 12

Amended by
No. 48, 1963,
s. 12; No. 28,
1974, s. 7; No. 64,
1981, s. 37

Amended by
No. 28, 1974, s. 7;
No. 154, 1977,
s. 12

115.³ The owner of a ship or aircraft shall not permit goods required to be entered for export to be taken on board the ship or aircraft for the purpose of exportation unless the goods have been so entered and the entry has been passed.

Penalty: \$500.

116. If any goods entered for export are not shipped according to the entry—

(1) The owner shall immediately report the fact to the officer and amend his entry for the goods not later than 3 days after the clearance of the ship or aircraft.

(2) The goods if dutiable shall forthwith be warehoused.

Penalty: \$100.

117. The Collector may require the owner to produce documents for any goods entered for export, and in the case of goods subject to the control of the Customs to give security that the same will be landed at the place for which they are entered or otherwise accounted for to the satisfaction of the Collector.

118. The master of any ship or the pilot of any aircraft shall not depart with his ship or aircraft from any port or airport without receiving from the Collector a Certificate of Clearance.

Penalty: \$500.

119. (1) Before any Certificate of Clearance is granted to a ship or aircraft—

(a) the master owner or pilot shall deliver to the Collector an Outward Manifest in accordance with the prescribed form;

(b) the master and owner of the ship or the pilot and owner of the aircraft shall severally answer questions relating to the ship or aircraft and her cargo, crew, passengers, stores and voyage; and

(c) the master and owner or the pilot and owner shall severally produce documents relating to the ship or aircraft and her cargo.

(2) If, within a period of 24 hours after the provisions of sub-section (1) have been complied with, the master or pilot has not received from the Collector a Certificate of Clearance, he may, at any time within 14 days after the expiration of that period, apply to the Minister for a Certificate of Clearance, and the decision of the Minister upon the application shall be final and conclusive.

(3) Where, in pursuance of the last preceding sub-section, the Minister has decided not to grant a Certificate of Clearance, the owner of the ship or aircraft shall be entitled, in a Court of competent jurisdiction,

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to recover damages against the Commonwealth in respect of the non-granting, or delay in granting, of the Certificate, if the Court is satisfied that the non-granting or delay was without reasonable and probable cause.

(4) Except as provided in the last preceding sub-section no action or other proceeding shall lie against the Commonwealth, or any officer of the Commonwealth, by reason of the non-granting of any Certificate of Clearance, or of any delay in the granting of a Certificate of Clearance.

Amended by
No. 28, 1974, s. 7;
No. 154, 1977,
s. 12

120. The master of a ship or the pilot of an aircraft shall not suffer to be taken on board his ship or aircraft any goods other than—

Shipment of
goods

- (a) goods which are specified or referred to in the Outward Manifest;
- (b) passengers' baggage;
- (c) stores in respect of which the approval of a Collector has been granted under section 129;
- (d) ballast as approved by the Collector.

Substituted by
No. 54, 1959,
s. 18; amended by
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 104,
1968, s. 24;
No. 28, 1974, s. 7;
No. 64, 1981,
s. 37

Penalty: \$250.

* * * * *

Section 121
repealed by
No. 111, 1960,
s. 6

122. Except as prescribed, no Certificate of Clearance shall be granted for any ship or aircraft unless all her inward cargo and stores shall have been duly accounted for to the satisfaction of the Collector nor unless all the other requirements of the law in regard to such ship or aircraft and her inward and outward cargo have been duly complied with.

Time of
clearance

Amended by
No. 12, 1923, s. 2;
No. 108, 1952,
s. 10

123. (1) The master of every ship departing from any port shall bring his ship to at a boarding station appointed for the port and by all reasonable means facilitate boarding by the officer, and shall not depart with his ship from any port with any officer on board such ship in the discharge of his duty without the consent of such officer.

Ship to bring
to and
aircraft to
stop at
boarding
stations

Sub-section (1)
amended by
No. 48, 1963,
s. 13; No. 28,
1966, s. 4; No. 54,
1967, s. 10;
No. 64, 1981,
s. 37

Penalty: \$500.

(2) The pilot of every aircraft departing from any airport shall bring his aircraft to a boarding station appointed for the port or airport, and by all reasonable means facilitate boarding by the officer, and shall not depart with his aircraft from any port or airport with any officer on board such aircraft without the consent of such officer.

Added by No. 12,
1923, s. 21;
amended by
No. 108, 1952,
s. 20; No. 48,
1963, s. 13;
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

Penalty: \$500.

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Master or
pilot to
account for
missing goods

Amended by
No. 12, 1923, s. 2;
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

124. The master of every ship and the pilot of every aircraft after clearance shall—

- (a) On demand by an officer produce the Certificate of Clearance;
- (b) Account to the satisfaction of the Collector for any goods specified or referred to in the Outward Manifest and not board his ship or aircraft.

Penalty: \$250.

Goods
exported to
be landed at
proper
destination

Amended by
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

125. No goods shipped for export shall be unshipped or landed without the permission of the Collector except in parts beyond the seas.

Penalty: \$250.

Certificate of
landing

126. If required by the Comptroller a certificate in such form and to be given by such person as may be prescribed shall be produced in proof of the due landing according to the export entry of any goods subject to the control of the Customs, and the Collector may refuse to allow any other goods subject to the control of the Customs to be exported by any person who fails within a reasonable time to produce such certificate of the landing of any such goods previously exported by him or to account for such goods to the satisfaction of the Collector.

Part VII
substituted by
No. 108, 1952,
s. 11

PART VII—SHIPS' STORES AND AIRCRAFT'S STORES

Use of ships'
and aircraft's
stores

Substituted by
No. 108, 1952,
s. 11; amended by
No. 104, 1968,
s. 25; No. 28,
1974, s. 7

127. Ships' stores and aircraft's stores, whether shipped in parts beyond the seas or in Australia—

- (a) shall not be unshipped or unloaded without the consent of the Collector; and
- (b) shall not, except with the consent of the Collector, be used before the departure of the ship or aircraft from its last port of departure in Australia otherwise than for the use of the passengers or crew, or for the service, of the ship or aircraft.

Unshipment
of ships' and
aircraft's
stores

Substituted by
No. 108, 1952,
s. 11

128. Ships' stores and aircraft's stores which are unshipped or unloaded with the consent of the Collector shall be entered—

- (a) for home consumption;
- (b) for warehousing; or
- (c) for transshipment to another ship or aircraft.

s. 129

129. (1) The master or owner of a ship or the pilot or owner of an aircraft may make application to a Collector for the approval of the Collector to take ship's stores or aircraft's stores on board the ship or aircraft and the Collector may grant to the master, pilot or owner of the ship or aircraft approval to take on board such ship's stores or such aircraft's stores as the Collector, having regard to the voyage or flight to be undertaken by the ship or aircraft and to the number of passengers and crew to be carried, determines.

Ships' and aircraft's stores not to be taken on board without approval
Substituted by No. 104, 1968, s. 26

(2) Approval under the last preceding sub-section may be granted subject to the condition that the person to whom the approval is granted complies with such requirements as are specified in the approval, being requirements that, in the opinion of the Collector, are necessary for the protection of the revenue of the Customs or for the purpose of ensuring compliance with the Customs Act.

(3) If, in relation to any goods, a person to whom an approval has been granted under sub-section (1) fails to comply with a requirement specified in the approval—

Amended by No. 28, 1974, s. 7; No. 64, 1981, s. 37

- (a) he is guilty of an offence against this Act punishable, upon conviction, by a penalty not exceeding \$1,000; and
- (b) if he failed to comply with a requirement before the goods were placed on board the ship or aircraft—the removal of the goods for the purpose of placing the goods on board the ship or aircraft shall, for the purposes of paragraph (g) of section 229, be deemed not to have been authorized by this Act.

(4) Ship's stores or aircraft's stores taken on board a ship or aircraft otherwise than in accordance with an approval granted under sub-section (1) shall, notwithstanding that the goods are taken on board by authority of an entry under this Act, be deemed, for the purposes, to be prohibited exports.

Amended by No. 28, 1974, s. 7

130. Except as provided by the regulations, ship's stores and aircraft's stores are not liable to duties of Customs.

Ship's and aircraft's stores exempt from duty
Substituted by No. 104, 1968, s. 26

130A.³ Goods consisting of ship's stores or aircraft's stores, other than goods of a prescribed kind, may be taken on board a ship or aircraft in accordance with an approval granted under section 129 notwithstanding that an entry has not been made and passed in respect of the goods authorizing the removal of the goods to the ship or aircraft and duty has not been paid on the goods.

Entry not required for ship's or aircraft's stores
Substituted by No. 104, 1968, s. 26; amended by No. 28, 1974, s. 7

s. 130B

Payment of
duty on
ship's or
aircraft's
stores

Substituted by
No. 104, 1968,
s. 26

Sub-section (1)
amended by
No. 28, 1974, s. 7

130B. (1) Where duty is payable on goods taken on board a ship as ship's stores, or on board an aircraft as aircraft's stores, in accordance with an approval granted under section 129 without duty having been paid on the goods, the duty shall, on demand for payment of the duty being made by a Collector to the master or owner of the ship or to the pilot or owner of the aircraft, be paid as if the goods had been entered for home consumption on the day on which the demand was made.

(2) The owner of a ship or aircraft or, if so directed by an officer, the master of a ship or the pilot of an aircraft, shall, immediately before the departure of the ship or aircraft from Australia and whenever so directed by an officer, furnish to a Collector, in accordance with the prescribed form, a return relating to the ship's stores of the ship or the aircraft's stores of the aircraft and to goods taken on board the ship as ship's stores or on board the aircraft as aircraft's stores.

Interpret-
ation

Inserted by
No. 104, 1968,
s. 26

130C. In this Part—

"aircraft" does not include a coasting aircraft;

"aircraft's stores" means stores for the use of the passengers or crew of an aircraft, or for the service of an aircraft;

"ship" does not include a coasting ship;

"ship's stores" means stores for the use of the passengers or crew of a ship, or for the service of a ship.

PART VIII—THE DUTIES

Division 1—The Payment and Computation of Duties generally

Section 131
repealed by
No. 29, 1965, s. 5

* * * * *

Fish caught
by Australian
ships

Inserted by
No. 7, 1934, s. 11

Sub-section (1)
amended by
No. 162, 1973,
s. 3; No. 64, 1981,
s. 37

131A. (1) Fish and other goods the produce of the sea which are caught or gathered by a ship which—

(a) is registered in Australia; and

(b) was fitted out for the voyage during which those fish or goods were caught or gathered at a port or place in Australia,

shall not, when brought into Australia by that ship, or by a tender (which is registered in Australia) of that ship, be liable to any duty of Customs, or, subject to sub-section (2), be subject to the control of the Customs.

(2) Sub-section (1) does not exclude fish or other goods the produce of the sea specified in the Convention on International Trade in endangered species of wild fauna and flora from the control of Customs where the importation into Australia of the fish or other goods, as the case may be, is prohibited, either absolutely or otherwise, by the regulations. The regulations shall specify those species of wild fauna and flora which are

Added by
No. 162, 1973,
s. 3

s. 131A

applicable to the provisions of the Convention on International Trade in endangered species of wild fauna and flora.

132. (1) Subject to this section and to section 132B, the rate of any import duty payable on goods is the rate of the duty in force when the goods are entered for home consumption.

Rate of import duty
Substituted by
No. 48, 1963,
s. 17

(2) Where goods are entered for home consumption more than once before import duty is paid on them, the rate at which the import duty is payable is the rate of the duty in force when the goods were first entered for home consumption.

Sub-section (1)
amended by
No. 28, 1974, s. 5

(3) For the purposes of this section, where an entry for home consumption in respect of goods is withdrawn under sub-section (2) of section 37 and the goods are subsequently entered for warehousing or for removal to a specified place, the entry for home consumption shall be disregarded.

Amended by
No. 28, 1974, s. 7

132A. Where, before goods are entered for home consumption, an amount is paid to a Collector in respect of duty that may become payable in respect of the goods, the amount shall, upon the goods being entered for home consumption, be deemed, for the purposes of this Act, to be an amount of duty paid in respect of the goods.

Prepayment
of duty
Inserted by
No. 104, 1968,
s. 27

132B. (1) If at any time the Minister is of the opinion that, for the reason that persons are anticipating, or may anticipate, an increase in the rate of duty applicable to goods of a particular kind, the quantity of goods of that kind that may be entered for home consumption during a period is likely to be greater than it would otherwise be, the Minister may, by notice published in the *Gazette*, declare that that period is, for the purposes of this section, a declared period with respect to goods of that kind.

Declared
period
quotas—
effect on
rates of
import duty
Inserted by
No. 28, 1974, s. 6

(2) The Minister shall, in a notice under sub-section (1) declaring that a period is a declared period for the purposes of this section, specify in the notice another period being a period ending before the commencement of the declared period, as the base period in relation to the declared period.

(3) Where the Minister makes a declaration under sub-section (1) specifying a declared period in respect of goods of any kind, he may, in respect of that kind of goods, or goods of a kind included in that kind of goods, make an order in writing (in this Act referred to as a "quota order") applicable to a person specified in the order, being an order that states that the person's quota, for the declared period, in respect of goods of the kind to which the order relates is such quantity as is specified in the order or is nil, and, subject to sub-section (4) of this section and sub-section (6) of section 71B, the order comes into force forthwith.

(4)³ Where, during a declared period, a person enters goods for home consumption, being goods of a kind in respect of which there is no quota order in force that is applicable to that person for the declared period, the

s. 132B

Minister may, before the entry is passed and whether or not the declared period has expired, make, under sub-section (3), a quota order that is applicable to that person for that declared period in respect of goods of that kind, and a quota order so made shall, subject to sub-section (6) of section 71B and unless the contrary intention appears in the order, be deemed to have come into force immediately before the time of entry of the goods.

(5) In making a quota order under sub-section (3), or revoking or varying a quota order under section 132C, with respect to a person, the Minister shall have regard to the quantity of goods (if any) of the kind to which the order relates that, at any time or times during the period that is the base period with respect to the declared period to which the order relates or during any other period that the Minister considers relevant, the person has entered for home consumption, and to such other matters as the Minister considers relevant.

(6) If—

- (a) at any time during a declared period, a person has entered any goods (in this section referred to as the “relevant goods”) for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that states that the person’s quota in respect of goods of that kind is a quantity specified in the order;
- (b) the quantity of the relevant goods so entered, together with goods (if any) of that kind previously entered for home consumption by the person during the declared period, exceeds the quota; and
- (c) the amount of import duty paid or payable on the relevant goods at the rate of duty in force at the time of entry of the goods is less than the amount of duty applicable to those goods in accordance with the rate of duty in force on the day immediately following the last day of the declared period,

the rate of import duty payable on the relevant goods, or on so much of the relevant goods as, together with goods (if any) of that kind previously entered for home consumption by the person during the declared period, exceeds the quota, is the rate of duty in force on the day immediately following the last day of the declared period.

(7) If—

- (a) at any time during a declared period, a person has entered any goods for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that states that the person’s quota in respect of goods of that kind is nil; and
- (b) the amount of import duty paid or payable on those goods at the rate of duty in force at the time of entry of the goods is less than the amount of duty applicable to those goods in accordance with

the rate of duty in force on the day immediately following the last day of the declared period,

the rate of import duty payable on the goods is the rate of duty in force on the day immediately following the last day of the declared period.

(8)¹ Where at any time during a declared period, a person enters any goods for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that is applicable to that person for the declared period, the Customs shall have the right, before the entry is passed, in addition to requiring import duty to be paid on the goods at the rate in force at that time of entry of the goods, to require and take, for the protection of the revenue of the Customs in relation to any additional amount of duty that may become payable on the goods, or on a part of the goods, by virtue of the operation of sub-section (6) or (7), security by way of cash deposit of an amount equal to the amount of duty payable on the goods, or on that part of the goods, at the rate in force at the time of entry of the goods.

(9) For the purposes of this section, a person shall be deemed to have entered goods for home consumption at a particular time (in this section referred to as the "time of entry") if the person entered the goods, or caused the goods to be entered, for home consumption at that time or is, by virtue of sub-section (1B) or (1C) of section 37 or sub-section (2) of section 71B, deemed to have entered the goods for home consumption at that time.

132C. (1) The Minister may, by writing under his hand, revoke or vary a quota order at any time before—

- (a) the expiration of the declared period to which the quota order relates; or
- (b) the expiration of the period within which, under regulations made by virtue of section 132E, application may be made for the review of the quota order,

whichever last occurs.

(2) Where a quota order is revoked by the Minister under this section, the revocation shall be deemed to have taken effect on the day on which the order came into force.

(3) The revocation of a quota order under this section does not prevent the making of a further quota order that is applicable to the person to whom the revoked quota order was applicable and that has effect with respect to the declared period in respect of which the revoked quota order had effect, whether or not the kind of goods to which the further quota order relates is the same as the kind of goods to which the revoked quota order related.

Revocation
and variation
of quota
orders
Inserted by
No. 28, 1974, s. 6

s. 132C

(4) Subject to sub-section (5), a variation of a quota order under this section shall, for the purposes of section 132B, be deemed to have had effect on and from the day on which the quota order came into force.

(5) Where—

- (a) a quota order applicable to a person states that the person's quota in respect of goods of the kind to which the order relates is a quantity specified in the order; and
 - (b) the Minister varies the order in such a way that the order specifies a lesser quantity or states that the person's quota is nil,
- the variation has effect on and from the day on which it is made.

Service of
quota orders,
&c.

Inserted by
No. 28, 1974, s. 6

132D. The Minister shall, as soon as practicable after he makes a quota order or revokes or varies a quota order, cause a copy of the quota order or of the revocation or variation, as the case may be, to be served on the person to whom the quota order is applicable.

Section 132E
repealed by
No. 61, 1981,
s. 115

* * * * *

Export duty

133. (1) All export duties shall be finally payable at the rate in force when the goods are actually exported but in the first instance payment shall be made by the owner to the Collector at the rate in force when the goods are entered for export.

Added by
No. 107, 1975,
s. 4

(2) Duty imposed on coal by the *Customs Tariff (Coal Export Duty) Act 1975* shall be payable at the rate in force when the coal is exported and shall be paid before the coal is exported or within such further period as the Collector allows.

Added by
No. 107, 1975,
s. 4; amended by
No. 177, 1979,
s. 3

(3) Applications may be made to the Administrative Appeals Tribunal for review of decisions of a Collector made for the purposes of the definition of "high quality coking coal" in section 4 of the *Customs Tariff (Coal Export Duty) Act 1975* or for the purposes of section 6 or 7 of that Act, and for review of decisions of the Minister for Trade and Resources made for the purposes of section 8 of that Act.

Added by
No. 177, 1979,
s. 3

(4) In sub-section (3), "decision" has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Added by No. 15,
1980, s. 3

(5) Duty imposed on Alligator Rivers Region uranium concentrate by the *Customs Tariff (Uranium Concentrate Export Duty) Act 1980* shall be payable at the rate in force when that concentrate is exported and shall be paid before that concentrate is exported or within such further period as the Collector allows.

s. 134

134. Where duties are imposed according to weight or measure the weight or measurement of the goods shall be ascertained according to the standard weights and measures by law established.

Weights and measures

135. Where duties are imposed according to a specified quantity weight size or value the duties shall apply in proportion to any greater or lesser quantity, weight, size or value.

Proportion

136. Whenever goods are sold or prepared for sale as or are reputed to be of a size or quantity greater than their actual size or quantity duties shall be charged according to such first-mentioned size or quantity.

Duty how fixed

* * * * *

Section 137 repealed by No. 12, 1971, s. 3; sections 138-140 repealed by No. 29, 1965, s. 6; section 141 repealed by No. 28, 1966, s. 3

142. Goods charged with duty by measurement shall at the expense of the owner be heaped piled sorted framed or otherwise placed in such manner as the Collector may require to enable measurement and account thereof to be taken; and in all cases where the same are measured in bulk the measurement shall be taken to the full extent of the heap or pile.

Measurement for duty

* * * * *

Section 143 repealed by No. 41, 1976, s. 3; section 144 repealed by No. 29, 1965, s. 7

145. When the duty on any goods sold at any Collector's sale shall be *ad valorem* the value of such goods shall if approved by the Collector be taken to be the value as shown by the sale.

Value of goods sold

146. The strength of spirits may be ascertained for the purposes of duty by means of a hydrometer approved by the Comptroller.

Strength of spirits

147. If in the opinion of the Collector the strength of any spirits cannot immediately be accurately ascertained by hydrometer the strength may be ascertained after distillation or in any prescribed manner.

Obscuration

148. All goods derelict flotsam jetsam or lagan or landed saved or coming ashore from any wreck or sold as droits of Admiralty shall be charged with duty as if imported in the ordinary course.

Derelict goods dutiable

s. 149

As to
payment of
duty on
goods in
manifest but
not produced
or landed

Amended by
No. 12, 1923, s. 2

Samples

Amended by
No. 104, 1968,
s. 28

When goods
deemed to be
the produce
or
manufacture
of a country

Substituted by
No. 82, 1965, s. 4

Sub-section (1)
amended by
No. 133, 1965,
ss. 3 and 8;
No. 28, 1974, s. 7

Amended by
No. 133, 1965,
ss. 3 and 8;
No. 104, 1968,
s. 29; No. 28,
1974, s. 7;
No. 120, 1974,
s. 4; No. 174,
1976, s. 4;
No. 171, 1980,
s. 3

149. If any dutiable goods which are included in the report of any ship or aircraft shall not be produced to the officer the master or owner of the ship or the pilot or owner of the aircraft shall on demand by the Collector pay the duty thereon as estimated by the Collector unless the goods are accounted for to the satisfaction of the Collector.

150. Small samples of the bulk of any goods subject to the control of the Customs may, with the approval of a Collector, be delivered free of duty.

151. (1) For the purposes of this Act and the *Customs Tariff* 1966 (other than section 20 of the last-mentioned Act), goods shall be treated as the produce of a country if they are unmanufactured raw products of the country.

(2) For the purposes of this Act and the *Customs Tariff* 1966 (other than section 16A or 20 of, or Part IX, or Part X, of Schedule 5 to, the last-mentioned Act), goods shall be treated as the manufacture of a country—

(a) if the goods were wholly manufactured in the country from materials of one or more of the following classes:

(i) unmanufactured raw products;

(ii) materials wholly manufactured in the country or in Australia, or in the country and in Australia; and

(iii) imported materials that the Minister has, in relation to the country, determined, by notice published in the *Gazette*, to be manufactured raw materials; or

(b) if the goods were partly manufactured in the country, the process last performed in the manufacture of the goods was performed in the country and—

(i) not less than three-quarters, or, in the case of goods that are of a class or kind not commercially manufactured in Australia, one-quarter, of the factory or works cost of the goods is represented by the value of labour or materials, or of labour and materials, of the country or of the country and Australia;

(ii) in the case where the country is New Zealand—not less than one-half, or, in the case of goods included in a class of goods in respect of which the Minister had determined, by notice published in the *Gazette*, that another portion is appropriate, that portion, of the factory or works cost of the goods is represented by the value of labour or

materials, or of labour and materials, of New Zealand or of New Zealand and Australia; or

- (iii) in the case where the country is Papua New Guinea—not less than one-half, or, in the case of goods included in a class of goods in respect of which the Minister has determined, by notice published in the *Gazette*, that a lesser portion is appropriate, that portion, of the factory or works cost of the goods is represented by the value of labour or materials, or of labour and materials, of Papua New Guinea or Papua New Guinea and Australia.

(3) For the purposes of section 16A of, or Part IX of Schedule 5 to, the *Customs Tariff* 1966, goods shall be treated as the manufacture of a country if—

Amended by
No. 133, 1965,
s. 8; No. 104,
1968, s. 29;
No. 28, 1974, s. 7;
No. 120, 1974,
s. 4

- (a) the process last performed in the manufacture of the goods was performed in the country; and
- (b) not less than one-half of the factory or works cost of the goods is represented by the value of labour or materials, or of labour and materials, of the country or of the country and one or more of the following countries, that is to say, Australia and countries that, at the time the goods are entered for home consumption, are developing countries, other than a country that, by virtue of a direction under sub-section (2) of section eleven of the *Customs Tariff* 1966, is not to be treated as a developing country in relation to the class of goods in which the goods are included.

(3A) For the purposes of Part X of Schedule 5 to the *Customs Tariff Act* 1966, goods shall be treated as the manufacture of a country if—

Inserted by
No. 171, 1980,
s. 3

- (a) the process last performed in the manufacture of the goods was performed in the country; and
- (b) not less than one-half, or, in the case of goods included in a class of goods in respect of which the Minister has determined, by notice published in the *Gazette*, that, in relation to the country, a lesser portion is appropriate, that portion, of the factory or works cost of the goods is represented by the value of labour or materials, or of labour and materials, of the country or of the country and one or more of the following countries, that is to say, Australia and countries that, at the time the goods are entered for home consumption, are Forum Island Countries, other than a country that, by virtue of a direction under sub-section (2) of section 12 of the *Customs Tariff Act* 1966, is not to be treated as a Forum Island Country in relation to the class of goods in which the goods are included.

(3B) The Minister may, for the purposes of paragraph (b) of sub-section (3A), determine that, in the case of goods included in a specified class of goods, a specified portion is appropriate in relation to a

Inserted by
No. 171, 1980,
s. 3

s. 151

specified Forum Island Country or in relation to all Forum Island Countries.

Amended by
No. 171, 1980,
s. 3

(4) For the purposes of sub-sections (2), (3) and (3A), the Minister may, by notice published in the *Gazette*—

- (a) specify the manner in which the factory or works cost of goods is to be determined; and
- (b) specify the manner in which the value of labour, the value of materials or the value of labour and materials is to be determined.

Amended by
No. 28, 1974, s. 7;
No. 120, 1974,
s. 4

(5) For the purposes of sub-paragraph (i) of paragraph (b) of sub-section (2), the Minister may, by notice published in the *Gazette*, determine that goods specified in the notice, or goods included in a class of goods so specified, shall be deemed to be goods of a class or kind not commercially manufactured in Australia.

Amended by
No. 28, 1974, s. 7;
No. 120, 1974,
s. 4

(6) The Minister may, by notice published in the *Gazette*, determine that the reference in sub-paragraph (i) of paragraph (b) of sub-section (2) to one-quarter shall, in relation to goods specified in the notice, or goods included in a class of goods so specified, be read as a reference to one-half.

Sub-section (7)
omitted by
No. 120, 1974,
s. 4

* * * * *

Amended by
No. 133, 1965,
ss. 3 and 8;
No. 104, 1968,
s. 29; No. 28,
1974, s. 7;
No. 120, 1974,
s. 4; No. 171,
1980, s. 3

(8) Notwithstanding anything contained in this section—

- (a) the Minister may, subject to the next succeeding paragraph, direct that, for the purposes of this Act and the *Customs Tariff* 1966 (other than section 16A or 20 of, or Part IX, or Part X, of Schedule 5 to, the last-mentioned Act), a cinematograph film that is, under the laws of the United Kingdom relating to the registration of cinematograph films, certified by the Board of Trade of the United Kingdom to be registered as a British film shall be treated as the manufacture of the United Kingdom; and
- (b) a cinematograph film printed in the United Kingdom shall not, for the purposes of this Act or the *Customs Tariff* 1966 (other than section 16A or 20 of, or Part IX, or Part X, of Schedule 5 to, the last-mentioned Act), be treated as the manufacture of the United Kingdom unless it was printed from a negative the manufacture of the United Kingdom.

(9) This section does not apply for the purposes of determining whether the goods are the produce, or the manufacture, of Australia.

Inserted by
No. 171, 1980,
s. 3

(9A) In this section, "Forum Island Country" has the same meaning as in the *Customs Tariff Act* 1966.

s. 151

(10) In this section, "unmanufactured raw products" means natural or primary products that have not been subjected to an industrial process, other than an ordinary process of primary production, and includes, without limiting the generality of the foregoing—

- (a) animals, and parts of animals obtained by killing, including bones, hides and skins (raw or sun-dried);
- (b) greasy wool;
- (c) plants, and parts of plants, including raw cotton, bark, fruit, nuts, grain, seeds (in their natural state) and unwrought logs;
- (d) minerals in their natural state and ores; and
- (e) crude petroleum.

151A. (1) For the purposes of this Act and the *Customs Tariff* 1966 (other than section 16A or 20 of, or Part IX of Schedule 5 to, the last-mentioned Act), goods shall not be treated as the produce or manufacture of the United Kingdom, Canada, New Zealand, Ireland, or Papua New Guinea unless they have been shipped from that country to Australia and, except where the Collector is satisfied that the intended destination of the goods when originally shipped from that country was Australia, have not been transhipped.

Direct shipment to Australia for certain preferences
Substituted by No. 82, 1965, s. 4
Sub-section (1) amended by No. 133, 1965, ss. 4 and 8; No. 104, 1968, s. 30; No. 28, 1974, s. 7; No. 120, 1974, s. 5; No. 174, 1976, s. 5; No. 61, 1981, s. 115

(2) The last preceding sub-section does not apply—

- (a) to goods the produce or manufacture of a country other than New Zealand that are imported into Australia from New Zealand; or
- (b) to goods the produce or manufacture of a country other than Papua New Guinea that are imported into Australia from Papua New Guinea.

Amended by No. 174, 1976, s. 5

* * * * *

Sub-section (3) omitted by No. 120, 1974, s. 5; sub-section (4) omitted by No. 61, 1981, s. 115.

152. (1) If after any agreement is made for the sale or delivery of goods duty paid any alteration takes place in the duty collected affecting such goods before they are entered for home consumption, or for export, as the case may be, then in the absence of express written provision to the contrary the agreement shall be altered as follows:

- (a) In the event of the alteration being a new or increased duty the seller after payment of the new or increased duty may add the difference caused by the alteration to the agreed price.

Alterations to agreements where duty altered
Sub-section (1) amended by No. 56, 1950, s. 4

s. 152

- (b) In the event of the alteration being the abolition or reduction of duty the purchaser may deduct the difference caused by the alteration from the agreed price.
- (c) Any refund or payment of increased duty resulting from the alteration not being finally adopted shall be allowed between the parties as the case may require.

Added by
No. 107, 1975,
s. 5

(2) Sub-section (1) does not apply in relation to duty imposed by the *Customs Tariff (Coal Export Duty) Act 1975*.

Added by
No. 15, 1980, s. 4

(3) Sub-section (1) does not apply in relation to duty imposed by the *Customs Tariff (Uranium Concentrate Export Duty) Act 1980*.

Recovery of
duties

153. All duties shall constitute Crown debts charged upon the goods in respect of which the same are payable and payable by the owner of the goods and recoverable at any time in any court of competent jurisdiction by proceedings in the name of the Collector.

Division 2—Ad Valorem Duties

Section 153A
repealed by
No. 41, 1976, s. 4

* * * * *

Value for
duty

Substituted by
No. 41, 1976, s. 4

154. (1) In this section—

“Annex I” means Annex I to the Convention, a copy of the English text of which is set out in Part I of Schedule VII;

“Annex II” means Annex II to the Convention, a copy of the English text of which is set out in Part II of Schedule VII;

“Convention” means the Convention on the Valuation of Goods for Customs Purposes signed at Brussels on 15 December 1950;

“Convention Definition of Value” means the Definition of Value set out in Annex I as affected by the Interpretative Notes to the Definition of Value set out in Annex II.

(2) Subject to sub-section (3), the value of any imported goods shall, for the purposes of the *Customs Tariff Act 1966-1976* (except in a case where this Act or that Act provides otherwise) be the amount ascertained in accordance with the Convention Definition of Value.

(3) In the application of the Convention Definition of Value for the purposes of sub-section (2), the provisions of the Convention Definition of Value have effect as if—

- (a) the reference in Article I (1) in Annex I to goods imported for home use were read as a reference to goods imported into Australia;
- (b) the reference in Article I (1) in Annex I to the time when the duty becomes payable were read as a reference to the time when

goods are first entered or deemed to be entered for the purposes of this Act;

- (c) a reference in Article I (2) (a) in Annex I and in Note 5 set out in Annex II under the heading "Addendum to Article I" to the port or place of introduction into the country of importation were read as a reference to the port or airport at which goods are discharged on importation into Australia;

- (d) there were substituted for Article I (2) (b) in Annex I the following:

"(b) that with the exception of costs, charges and expenses incidental to the delivery of the goods from the port or place of exportation to the port or airport at which the goods are discharged on importation into Australia, the seller bears all costs, charges and expenses incidental to the sale and to the delivery of the goods at the port or airport at which the goods are discharged on importation into Australia, which are hence included in the normal price;"

- (e) a reference in Article I (2) (c) in Annex I and in Annex II to the country of importation were read as a reference to Australia;

- (f) there were inserted in Note 2 set out in Annex II under the heading "Addendum to Article I", after the words "cost of containers excluding those which are treated as separate articles for the purpose of levying duties of customs", the words "but including containers that fall within item 12 in Schedule 2 to the *Customs Tariff Act 1966-1976*";

- (g) the reference in Note 4 set out in Annex II under the heading "Addendum to Article I" to the official rate of exchange were read as a reference to the fair rate of exchange referred to in section 157; and

- (h) in the case of goods that are the produce or manufacture of Canada, inland freight charges incurred in Canada were not greater than the amount of freight charges that would have been incurred in Canada if the goods had been forwarded from the place of origin of the goods to the nearest point of exit in Canada.

(4) For the purposes of this section, costs, charges and expenses of containers or of packing shall not be taken as falling within the exception set out in paragraph (b) of Article I (2) in Annex I as that paragraph has effect in accordance with paragraph (3) (d) of this section.

Added by
No. 183, 1978,
s. 3

* * * * *

Section 155,
repealed by
No. 41, 1976, s. 4;
section 156
repealed by
No. 54, 1959,
s. 20

s. 157

Value for
duty to be in
Australian
currency
Substituted by
No. 54, 1947, s. 5

157. (1) Where any amount which is, under any other provision of this Act, required to be taken into account for the purpose of ascertaining the value for duty of any goods is not an amount in Australian currency, the amount to be so taken into account shall be the equivalent in Australian currency of that amount, ascertained according to a fair rate of exchange at the date of exportation of the goods.

(2) For the purposes of this section, the Minister may, where he considers it desirable so to do for the avoidance of doubt, specify, by notice published in the *Gazette*, a rate which is to be deemed to be, or to have been, a fair rate of exchange in relation to any currency—

- (a) on a date, or during a period, preceding the date of publication of the notice; or
- (b) from the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.

Amended by
No. 28, 1974, s. 7

(3) The rate of exchange specified in relation to any currency in pursuance of the last preceding sub-section shall, in relation to the value for duty of any goods exported on the date or during the period to which the rate so specified applies, be the rate of exchange which shall be applied for the purposes of sub-section (1) in respect of the currency specified in the notice.

(4) In any case in which the rate of exchange to be applied is not ascertained by virtue of the last preceding sub-section, and in which doubt exists as to that rate, the Minister may specify a fair rate of exchange to be applied for the purposes of the particular case.

Sections
157A-157F
repealed by
No. 12, 1923, s. 3;
sections 158-161
repealed by
No. 41, 1976, s. 5

* * * * *

Division 3—Deposits, Abatements, Remissions, and Refunds of Duties

Delivery of
goods upon
giving of
security or
undertaking
for payment
of duty
Substituted by
No. 108, 1952,
s. 12

162. (1) Where goods the property of a person included in a prescribed class of persons are imported or a person imports goods included in a prescribed class or goods intended for a prescribed purpose and intends to export those goods, the Collector may grant to the person importing the goods permission to take delivery of those goods upon giving a security or an undertaking, to the satisfaction of the Collector, for the payment of the duty on those goods.

(2) The regulations may prescribe provisions to be complied with in relation to goods in respect of which permission has been granted under the last preceding sub-section.

s. 162

(3) Where the Collector has granted permission to a person to take delivery of goods upon giving a security or an undertaking referred to in sub-section (1), the duty is not payable if—

Amended by
No. 28, 1974, s. 7;
No. 64, 1981,
s. 37.

- (a) the provisions of the regulations are complied with; and
- (b) the goods are exported within a period of 12 months after the date on which the goods were imported or within such further period as the Minister, on the application of the person who imported the goods, allows,

and, if security was given by way of deposit of cash or of an instrument transferable by delivery, the amount deposited or the instrument shall be returned to the person by whom the security was given.

(4) Where the regulations are not complied with or the goods are not exported from Australia within that period of twelve months or that further period allowed by the Minister, the security may be enforced according to its tenor or, where an undertaking to pay the amount of the duty has been given, that amount may be recovered at any time in a court of competent jurisdiction by proceedings in the name of the Collector.

162A. (1) The regulations may provide that—

- (a) goods of a specified class;
- (b) goods imported by persons of a specified class;
- (c) goods of a specified class imported by persons of a specified class;
or
- (d) goods imported for a specified purpose,

Delivery of
goods on the
giving of a
general
security or
undertaking
for payment
of duty
Inserted by
No. 48, 1963,
s. 18.

may, in accordance with this section, be brought into Australia on a temporary basis without payment of duty.

(2) The Comptroller may accept a security given by a person for the payment of, or an undertaking by a person to pay, any duty that may become payable on goods to which the security or undertaking relates, being goods in relation to which regulations under the last preceding subsection apply, that may be imported after a particular date or during a particular period and, where the Comptroller has accepted such security or undertaking, a Collector may grant to a person who imports goods to which the security or undertaking relates permission to take delivery of those goods without payment of duty.

(3) Goods delivered under this section shall, for the purposes of this Act, be deemed to be entered for home consumption on being so delivered.

(4) The regulations may prohibit a person to whom goods are delivered under this section from dealing with the goods in a manner, or in a manner other than a manner, specified in the regulations, or from so dealing with the goods except with the consent of the Comptroller.

s. 162A

Amended by
No. 64, 1981,
s. 37

(5) Duty is not payable on goods delivered under this section unless—

- (a) the goods have been dealt with in contravention of the regulations; or
- (b) the goods are not exported within such period, not exceeding 12 months, after the date on which the goods were imported as is notified to the person who imported the goods by the Collector when he grants permission to take delivery of the goods, or within such further period as the Minister, on the application of the person who imported the goods and of the person who gave the security or undertaking with respect to the goods, allows.

(6) A Collector may give permission for goods delivered under this section to be taken on board a ship or aircraft for export and, on permission being so given, the goods shall, for the purposes of this Act, be deemed to be entered for export.

(7) Where security under this section is given by way of a payment of money or a deposit of an instrument transferable by delivery, the money shall not be repaid or the instrument shall not be returned, as the case may be, until no duty is, or may become, payable on any goods to which the security relates that have been imported.

Amended by
No. 14, 1968, s. 3;
No. 28, 1974, s. 7

(8) Where goods have been dealt with in contravention of the regulations or goods are not exported from Australia within the period notified under paragraph (b) of sub-section (5) or within such further period as is allowed by the Minister under that paragraph, a security in respect of the goods may be enforced according to its tenor or, where an undertaking to pay the amount of the duty on the goods has been given, that amount may be recovered at any time in a court of competent jurisdiction by proceedings in the name of the Comptroller or the Collector of Customs for a State or Territory.

Pallets used
in
international
transport
Inserted by
No. 104, 1968,
s. 31

162B. (1) Where pallets are delivered under the last preceding section and it would be a contravention of the Convention by the Commonwealth to collect duty on the pallets, duty is not payable on the pallets.

(2) Where pallets are to be exported and it would be a contravention of the Convention by the Commonwealth to require the goods to be entered for export, the pallets may be exported without being entered for export.

(3) This section is in addition to, and not in derogation of, the provisions of sub-sections (5) and (6) of the last preceding section.

(4) In this section—

“pallet” has the same meaning as in the Convention;

Amended by
No. 28, 1974, s. 7

s. 162B

"the Convention" means the European Convention on Customs Treatment of Pallets used in International Transport signed at Geneva on 9 December 1960, as affected by any amendment of the Convention that has come into force.

163. (1) Refunds, rebates and remissions of duty may be made—

- (a) in respect of goods generally or in respect of the goods included in a class of goods; and
- (b) in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed, being circumstances, and conditions and restrictions, that relate to goods generally or to the goods included in the class of goods.

Refunds,
& c., of duty
Substituted by
No. 12, 1971, s. 4

(2) In the last preceding sub-section, "duty" includes an amount paid to a Collector in respect of duty that may become payable.

* * * * *

Sections 164 and
164A repealed by
No. 12, 1971, s. 4

164B. Whenever goods in respect of which an export duty of Customs has been paid are re-imported or brought back to Australia, the Minister may direct the refund of so much of the duty paid on those goods as he considers to be justified in the circumstances.

Refunds of
export duty
Inserted by
No. 56, 1950, s. 7

165. (1) When any duty has been short levied or erroneously refunded the person who should have paid the amount short levied or to whom the refund has erroneously been made shall pay the amount short levied or repay the amount erroneously refunded on demand being made by the Collector within twelve months from the date of the short levy or refund.

Short paid
duty may be
recovered

(2) For the purposes of the last preceding sub-section, a drawback of duty shall be deemed to be a refund of duty.

Added by
No. 104, 1968,
s. 33

166. If any practice of the Customs relating to classifying or enumerating any article for duty shall be altered so that less duty is charged upon such article, no person shall thereby become entitled to any refund on account of any duty paid before such alteration.

No refund if
duty altered

Division 4—Disputes as to Duty

167. (1) If any dispute arises as to the amount or rate of duty payable in respect of any goods, or as to the liability of any goods to duty, under any Customs Tariff, or under any Customs Tariff or Customs Tariff alteration proposed in the Parliament, the owner of the goods may pay under protest the sum demanded by the Collector as the duty payable in respect of the goods, and thereupon the sum so paid shall, as against the owner of the goods, be deemed to be the proper duty payable in respect of

Dispute as to
amount or
rate of duty
Substituted by
No. 36, 1910, s. 5
Sub-section (1)
amended by
No. 48, 1963,
s. 19

s. 167

the goods, unless the contrary is determined in an action brought in pursuance of this section.

(2) The owner may, within the times limited in this section, bring an action against the Collector, in any Commonwealth or State Court of competent jurisdiction, for the recovery of the whole or any part of the sum so paid.

Amended by
No. 12, 1923,
s. 25.

(3) A protest in pursuance of this section shall be made by writing on the entry of the goods the words "Paid under protest" and adding a statement of the grounds upon which the protest is made, and, if the entry relates to more than one description of goods, the goods to which the protest applies, followed by the signature of the owner of the goods or his agent.

Amended by
No. 48, 1963,
s. 19; No. 64,
1981, s. 37.

(4) No action shall lie for the recovery of any sum paid to the Customs as the duty payable in respect of any goods, unless the payment is made under protest in pursuance of this section and the action is commenced within the following times:

- (a) In case the sum is paid as the duty payable under any Customs Tariff, within 6 months after the date of the payment; or
- (b) In case the sum is paid as the duty payable under a Customs Tariff or Customs Tariff alteration proposed in the Parliament, within 6 months after the Act, by which the Customs Tariff or Customs Tariff alteration proposed in the Parliament is made law, is assented to.

Amended by
No. 28, 1974, s. 7.

(5) Nothing in this section shall affect any rights or powers under section 163.

Sub-section (6)
omitted by
No. 48, 1963,
s. 19.

* * * * *

PART IX—DRAWBACKS

Drawbacks
of import
duty
Substituted by
No. 104, 1968,
s. 34.

168. The regulations may make provision for and in relation to allowing drawbacks of duty paid on goods imported into Australia.

Section 169
repealed by
No. 12, 1923,
s. 26; sections
170-174 repealed
by No. 54, 1959,
s. 21.

* * * * *

PART X—THE COASTING TRADE

175. All ships or aircraft trading or plying or going from one port, airport or place in Australia to another port, airport or place therein and not trading plying or going to any other port, airport or place shall be considered as engaged in the coasting trade, and such ships or aircraft shall be deemed to be coasting ships or aircraft for the purposes of any Customs Act.

What are coasting ships and aircraft

Amended by No. 12, 1923, s. 2; No. 108, 1952, s. 20

176. The master of any coasting ship or the pilot of any aircraft shall not suffer any goods to be taken into or put out of his ship or aircraft from or into any other ship at sea or into any other aircraft except with the sanction of the Collector, nor suffer his ship or aircraft to deviate from her voyage unless forced to do so by unavoidable circumstances or under circumstances explained to the satisfaction of the Collector.

Coasters not to take in cargo at sea or deviate

Amended by No. 12, 1923, s. 2; No. 28, 1966, s. 4; No. 54, 1967, s. 10; No. 64, 1981, s. 37

Penalty: \$500.

177. The owner of any ship or aircraft employed in the coasting trade may with the consent of the Collector report such ship or aircraft inwards or outwards in lieu of the master thereof.

Owner may report ship or aircraft

Amended by No. 12, 1923, s. 2

Every such owner so reporting shall be subject to the same provisions and liable to the same penalties under the Customs Act as the master of such ship or the pilot of such aircraft.

178. The master or owner of every coasting ship shall at prescribed ports deliver to the Collector as prescribed particulars of all cargo consisting of Australian produce or manufactures then on board his ship.

Account of Australian goods

179. The coasting trade generally as regards the Customs shall be regulated in manner prescribed and books shall be kept, documents produced, and entries made accordingly.

Regulation

PART XI—AGENTS

Division 1—Preliminary

* * * * *

Division 1 substituted by No. 110, 1980, s. 11

Section 179A repealed by No. 110, 1980, s. 11

180. (1) In this Part, unless the contrary intention appears—

“agents licence” means a licence to act as a customs agent granted under section 183C and includes such a licence that has been renewed under section 183C;

Interpretation

Substituted by No. 110, 1980, s. 11

“Committee” means the National Customs Agents Licensing Advisory Committee established by section 183D;

s. 180

“corporate customs agent” means a customs agent that is a company or a partnership;

“customs agent” means a person who is the holder of an agents licence that is in force and, in relation to a place, means a person who is the holder of such a licence to act as a customs agent at that place;

“nominee”, in relation to a corporate customs agent, means a customs agent whose name is endorsed on the agents licence held by the corporate customs agent as a nominee of the corporate customs agent;

“person” means a natural person, a company or a partnership;

“prescribed offence” means—

- (a) an offence against this Act; or
- (b) an offence punishable under a law of the Commonwealth (other than this Act), or by a law of a State or of a Territory, by imprisonment for one year or longer.

(2) A reference in this Part to the Comptroller shall be read as including a reference to a Collector of Customs for a State or Territory.

Division 2—Rights and liabilities of agents

Division 2
substituted by
No. 110, 1980,
s. 11

Authorized
agents
Substituted by
No. 110, 1980,
s. 11

181. (1) Subject to sub-section (2), an owner of goods may, in writing, authorize a person to be his agent for the purposes of the Customs Acts at a place or places specified by the owner.

(2) Where the Minister, by notice published in the *Gazette*, declares that a place specified in the notice is a place to which this sub-section applies, an owner of goods shall not authorize a person to be his agent for the purposes of the Customs Acts at that place unless that person is—

- (a) a natural person who is an employee of the owner and is not an employee of any other person; or
- (b) a customs agent at that place.

(3) Where an owner of goods authorizes a person to be his agent for the purposes of the Customs Acts at a place, the owner may comply with the provisions of, or requirements under, the Customs Acts at that place by—

- (a) except where paragraph (b) applies—that agent; or
- (b) where the agent is a corporate customs agent—a nominee of the corporate customs agent who is a customs agent at that place.

(4) A person, other than the owner of goods or a person who, in accordance with this section, may comply with the provisions of, or requirements under, the Customs Acts on behalf of the owner in relation to those goods, shall not—

- (a) do any act or thing in relation to the goods that is required or permitted to be done by the owner of the goods under the Customs Acts; or
- (b) represent that he is able to do, or able to arrange to be done, any act or thing in relation to the goods that is required or permitted to be done by the owner under the Customs Acts.

(5) A person who contravenes sub-section (4) is guilty of an offence punishable on conviction—

- (a) in the case of a person not being a company—by a fine not exceeding \$200; or
- (b) in the case of a person being a company—by a fine not exceeding \$1,000.

182. (1) Where a person claims to be the agent of an owner of goods for the purposes of the Customs Acts at a place, an officer may require that person to produce written authority from the owner authorizing that person to be such an agent and, if that written authority is not produced, the officer may refuse to recognize the authority of that person to act on behalf of the owner at that place.

Authority to
be produced
Substituted by
No. 110, 1980,
s. 11

(2) Where a nominee of a corporate customs agent claims that that corporate customs agent is the agent of an owner of goods for the purposes of the Customs Acts at a place, an officer may require the nominee to produce a copy of the written authority from the owner of the goods authorizing the corporate customs agent to be such an agent and, if that written authority is not produced, the officer may refuse to recognize the authority of the nominee to act on behalf of the owner at that place.

183. (1) Where a person is, holds himself out to be or acts as if he were the agent of an owner of goods for the purposes of the Customs Acts, that person shall, for the purposes of the Customs Acts (including liability to penalty), be deemed to be the owner of those goods.

Agents
personally
liable
Substituted by
No. 110, 1980,
s. 11

(2) Where a corporate customs agent is the agent of an owner of goods for the purposes of the Customs Acts and a person who is, holds himself out to be or acts as if he were a nominee of that corporate customs agent acts in relation to those goods, that person shall, for the purposes of those Acts, (including liability to penalty), be deemed to be the owner of those goods.

(3) Any act done, or representation made, by a nominee of a corporate customs agent for the purposes of the Customs Acts shall be deemed to be an act done or, a representation made, by that corporate customs agent.

(4) Nothing in this section shall be taken to relieve any owner from liability.

s. 183A

Principal
liable for
agents acting
Substituted by
No. 110, 1980,
s. 11

183A. (1) Where an agent of, or a nominee of a corporate customs agent that is an agent of, an owner of goods makes a declaration for the purposes of this Act in relation to those goods, that declaration shall, for the purposes of this Act (including the prosecution of an offence against this Act), be deemed to be made with the knowledge and consent of the owner.

(2) Notwithstanding any other provision of this Act, a person who is convicted of an offence by reason of the operation of sub-section (1) shall not be subject to a penalty of imprisonment.

Division 3
substituted by
No. 110, 1980,
s. 11

Division 3—Licensing of customs agents

Interpret-
ation.

Substituted by
No. 110, 1980,
s. 11

183B. (1) In this Division, unless the contrary intention appears, "application" means an application under section 183CA.

(2) For the purposes of this Division, a person shall be taken to participate in the work of a corporate customs agent if—

- (a) he has authority as a nominee of, or as an agent, officer or employee of, the corporate customs agent, to do any act or thing for the purposes of the Customs Acts on behalf of an owner of goods; or
- (b) he has authority to direct a person who has authority referred to in paragraph (a) in the exercise of that authority.

Grant of
licence
Substituted by
No. 110, 1980,
s. 11

183C. (1) Subject to this Part, the Comptroller may grant a person a licence in writing, to be known as an agents licence, to act as a customs agent at a place or places specified in the licence.

(2) An agents licence granted to a corporate customs agent shall not specify a place as a place at which the corporate customs agent may act as a customs agent unless the licence specifies as a nominee of the corporate customs agent a customs agent at that place who, in accordance with section 183CD, is eligible to be its nominee.

Application
for licence
Inserted by
No. 110, 1980,
s. 11

183CA. (1) An application for an agents licence shall—

- (a) be in writing;
- (b) specify the place or places at which the applicant proposes to act as a customs agent;
- (c) where the application is made by a company or a partnership—specify the person or each person who, if the licence is granted, is to be its nominee;
- (d) set out the name and address of each person whom the Comptroller is required to consider for the purposes of sub-paragraph (i) of paragraph (a) of sub-section (1), or paragraph (b) or (c) of sub-section (1), of section 183CC;

s. 183CA

- (e) set out such particulars of the persons and matters that the Comptroller is required to consider for the purposes of subparagraph (ii) of paragraph (a) of sub-section (1) of section 183CC and section 183CD as will enable him adequately to consider those matters; and
- (f) contain such other information as is prescribed.
- (2) Where a company or a partnership makes an application, it—
 - (a) shall not propose a person as its nominee at a place unless, at the time the application is made—
 - (i) that person is a customs agent or a person qualified to become a customs agent;
 - (ii) where that person is acting as the nominee of a corporate customs agent—he intends, if an agents licence is granted to the applicant, to cease so to act; or
 - (iii) where that person is acting as a customs agent in his own right—he intends, if an agents licence is granted to the applicant, to cease so to act; and
 - (b) shall not propose a person as its nominee at more than one place unless that person will be able to attend to his duties as nominee at each of those places in a satisfactory manner.
- (3) A person shall not be proposed under paragraph (c) of sub-section (1) unless he has consented, in writing, to the proposal.

183CB. (1) Where the Comptroller receives an application, he shall refer the application to the Committee for a report relating to the application and shall not grant, or refuse to grant, an agents licence to the applicant unless he has received and considered the report.

Reference of application to Committee
Inserted by No. 110, 1980, s. 11

(2) Where the Comptroller refers an application to the Committee under sub-section (1), the Committee shall investigate the matters that the Comptroller is required to consider in relation to the application and, after its investigation, report to the Comptroller on those matters.

183CC. (1) Where an application is made, the Comptroller shall not grant an agents licence if, in his opinion—

Requirements for grant of licence
Inserted by No. 110, 1980, s. 11

- (a) where the application is made by a natural person—
 - (i) the applicant is not a person of integrity; or
 - (ii) the applicant is not qualified to be a customs agent;
- (b) where the application is made by a company—
 - (i) a director of the company who would participate in the work of the company if it were a customs agent is not a person of integrity; or
 - (ii) an officer or employee of the company who would participate in the work of the company if it were a customs agent is not a person of integrity; or

s. 183CC

(c) where the application is made by a partnership—

- (i) a partner in the partnership is not a person of integrity; or
- (ii) an employee of the partnership who would participate in the work of the partnership if it were a customs agent is not a person of integrity.

(2) For the purposes of sub-section (1), an applicant shall be taken to be qualified to be a customs agent if, and only if—

- (a) except where he has been exempted under sub-section (3), he has completed a course of study or instruction approved under sub-section (5); and
- (b) he has acquired experience that, in the opinion of the Comptroller, fits him to be a customs agent.

(3) The Comptroller may, by writing signed by him, exempt an applicant from the requirements of paragraph (a) of sub-section (2) where, having regard to the experience or training of the applicant, he considers that it is appropriate to do so.

(4) The Comptroller shall, in determining whether a person is a person of integrity for the purposes of sub-section (1), having regard to—

- (a) any conviction of the person for a prescribed offence committed within the 10 years immediately preceding the making of the application;
- (b) whether the person is an undischarged bankrupt;
- (c) any misleading statement made in the application by or in relation to the person; and
- (d) where any statement by the person in the application was false—whether the person knew that the statement was false.

(5) The Minister may, after obtaining and considering the advice of the Committee, approve, in writing, a course or courses of study or instruction that fits or fit him to be a customs agent.

Eligibility to
be nominee
Inserted by
No. 110, 1980,
s. 11

183CD. (1) A customs agent is eligible to be the nominee of a corporate customs agent if, and only if—

- (a) where the corporate customs agent is a company—he is a director or employee of the company;
- (b) where the corporate customs agent is a partnership—he is a member or employee of the partnership;
- (c) he is not the nominee of another customs agent;
- (d) he is not authorized to be an agent in accordance with sub-section (1) of section 181;
- (e) he is a customs agent at a place at which the corporate customs agent is an agent; and

s. 183CD

(f) subject to sub-section (2), he is not a customs agent at any other place.

(2) A customs agent shall not be ineligible to be the nominee of a corporate customs agent by reason only of paragraph (f) of sub-section (1) if—

- (a) all the places at which he is a customs agent are places at which the corporate customs agent is an agent; and
- (b) the Comptroller is satisfied that the customs agent could attend to the duties of the nominee of the corporate customs agent at all those places in a satisfactory manner.

183CE. (1) Where the Comptroller grants an agents licence, he shall—

- (a) endorse on the licence the name of the place or places at which the holder of the licence may act as a customs agent; and
- (b) where the licence is granted to a corporate customs agent—endorse on the licence the name of each customs agent who is a nominee of the corporate customs agent and opposite to each such name the name of the place or places at which he acts as a customs agent.

(2) The Comptroller shall not, in pursuance of sub-section (1), endorse a licence so as to show a person as a nominee of that corporate customs agent if—

- (a) that person is not a customs agent;
- (b) that person is the nominee of another corporate customs agent; or
- (c) that person acts as a customs agent in his own right.

(3) The Comptroller shall not, in pursuance of sub-section (1), endorse on a licence so as to show a person as the nominee of that corporate customs agent at more than one place unless the Comptroller is satisfied that that person will be able to attend satisfactorily to his duties as nominee at each of those places.

183CF. (1) Subject to sub-section (3), the Comptroller may, upon application in writing by a customs agent and the production of his agents licence, vary the endorsements on the licence so that a place is specified, or ceases to be specified, in the licence as a place at which the holder of the licence may act as a customs agent.

(2) Subject to sub-section (3), the Comptroller may, upon application in writing by a corporate customs agent and the production of its agents licence, vary the endorsements on the licence so that a person is specified, or ceases to be specified, in the licence as a nominee of the corporate customs agent.

Original
endorsements
on licence

Inserted by
No. 110, 1980,
s. 11

Variation of
licences

Inserted by
No. 110, 1980,
s. 11

s. 183CF

(3) The Comptroller shall not vary the endorsements on a licence so that the licence ceases to comply with sub-section (2) of section 183C.

(4) A person shall not be endorsed under sub-section (2) as a nominee of a corporate customs agent unless he has consented, in writing, to the endorsement.

Licence
granted
subject to
conditions
Inserted by
No. 110, 1980,
s. 11

183CG. (1) An agents licence is subject to the condition that if—

- (a) the holder of the licence is convicted of a prescribed offence;
- (b) in the case of a licence held by a natural person—the holder of the licence becomes bankrupt; or
- (c) in the case of a licence held by a company—the holder of the licence goes into liquidation,

the holder of the licence shall, within 30 days after the occurrence of the conviction, bankruptcy or liquidation, as the case requires, give the Comptroller particulars in writing of the conviction, bankruptcy or liquidation, as the case requires.

(2) An agents licence held by a natural person is subject to the condition that the holder of the licence shall not act as a customs agent in his own right at any time at which he is a nominee of a corporate customs agent.

(3) An agents licence held by a corporate customs agent is subject to the condition that if—

- (a) a person not described in the application for the licence as participating in the work of the corporate customs agent commences so to participate;
- (b) a nominee of the corporate customs agent dies or ceases to act as nominee of the corporate customs agent;
- (c) a person who participates in the work of the corporate customs agent is convicted of a prescribed offence or becomes bankrupt; or
- (d) in the case of a licence held by a partnership—
 - (i) a member of the partnership is convicted of a prescribed offence or becomes bankrupt; or
 - (ii) there is a change in the membership of the partnership,

the holder of the licence shall, within 30 days after the occurrence of the event, change, conviction or bankruptcy, as the case requires, give the Comptroller particulars in writing of that event, change, conviction or bankruptcy, as the case requires.

(4) An agents licence held by a corporate customs agent is subject to the condition that the agent shall do all things necessary to ensure that—

- (a) all persons who participate in the work of the corporate customs agent are persons of integrity; and

s. 183CG

- (b) in the case of a licence held by a partnership—all members of the partnership are persons of integrity.

(5) An agents licence is subject to such other conditions (if any) as are prescribed.

(6) An agents licence is subject to such other conditions (if any) as are specified in the licence, being conditions considered by the Comptroller to be necessary or desirable for the protection of the revenue.

(7) The Comptroller may, upon application in writing by a customs agent and the production of the licence held by the customs agent, vary the conditions specified in the licence by making an alteration to, or an endorsement on, the licence.

(8) Where a customs agent fails to comply with a condition of his licence the Comptroller may, by notice in writing served on him, require him to comply with that condition within the time specified in the notice.

183CH. (1) An agents licence—

- (a) comes into force on a date specified in the licence or, if no date is so specified, the date on which it is granted; and
- (b) subject to this Part, remains in force until 31 December next following the grant of the licence but may be renewed in accordance with section 183CJ.

Duration of
licence

Inserted by
No. 110, 1980,
s. 11

(2) A licence granted to a natural person ceases to have effect on the death of that person.

183CJ. (1) Where a customs agent, within one month before the date on which his agents licence is due to expire, applies in writing to the Comptroller for the renewal of the licence, the Comptroller, unless the Minister has given an order under paragraph (d) of sub-section (1) of section 183CS in relation to the licence or the customs agent is, by virtue of section 183CK, not entitled to hold an agents licence, shall, by writing, renew the licence.

Renewal of
licence

Inserted by
No. 110, 1980,
s. 11

(2) A renewal of a licence shall not take effect if, on or before the date on which the licence would, apart from the renewal, expire, the licence is revoked.

(3) Where the licence held by a customs agent has been suspended, sub-section (1) applies as if the licence had not been suspended, but the renewal of the licence does not have any force or effect until the licence ceases to be suspended.

s. 183CJ

(4) Where the Comptroller renews a licence under sub-section (1), he may, in accordance with sub-section (6) of section 183CG, specify conditions different from those specified in the original licence.

(5) Subject to this Part, a licence that has been renewed continues in force for 12 months after the renewal but may be further renewed.

Security

Inserted by
No. 110, 1980,
s. 11.

183CK. (1) The Comptroller may, by notice in writing served on a person making an application for an agents licence or a person who holds an agents licence, require that person to give, within the time specified in the notice, security in an amount determined by the Comptroller, not being an amount exceeding the amount prescribed in respect of the prescribed class of applicants or customs agents to which the person belongs, by bond, guarantee or cash deposit, or by any or all of those methods, for compliance by him with the Customs Acts, for compliance with the conditions or requirements to which the importation or exportation of goods is subject and generally for the protection of the revenue and that person is not entitled to be granted or to hold an agents licence, as the case may be, unless he gives security accordingly.

(2) Where the amount of the security in force in respect of a customs agent is less than the amount prescribed in respect of the prescribed class of customs agents to which the customs agent belongs, the Comptroller may, by notice in writing to the customs agent, require the customs agent to give, within such period as is specified in the notice, a fresh security in lieu of the security in force under sub-section (1) in an amount specified in the notice, being an amount not exceeding the amount so prescribed, and, if the customs agent fails to comply with the notice, the customs agent shall not be entitled to hold an agents licence.

(3) Where, by virtue of sub-section (1), an applicant for an agents licence is not entitled to be granted the licence, the Comptroller may refuse to grant the licence to the applicant.

(4) Where, by virtue of sub-section (1) or (2), a customs agent is not entitled to hold an agents licence, the Comptroller may cancel the agents licence held by the customs agent.

(5) Regulations made for the purposes of this section may prescribe different amounts in respect of different classes of applicants or customs agents and, without limiting the generality of the foregoing, may prescribe different amounts in respect of applicants who are natural persons and applicants that are partnerships or companies and in respect of customs agents who are natural persons and corporate customs agents.

Fees

Inserted by
No. 110, 1980,
s. 11

183CL. (1) Such fees (if any) as are prescribed are payable in respect of agents licences.

s. 183CL

(2) Regulations made for the purposes of this section may prescribe—

- (a) different fees in respect of different classes of customs agents and, without limiting the generality of the foregoing, may prescribe different fees in respect of customs agents who are natural persons and corporate customs agents; and
- (b) the time within which fees payable under this section are to be paid.

(3) Fees prescribed under sub-section (1) may include an amount calculated with regard to the cost of the establishment, administration and operation of the Committee.

183CM. For the purposes of this Part, a person shall be taken to be a nominee of a corporate customs agent from the time when the name of the nominee is endorsed, in pursuance of paragraph (b) of sub-section (1) of section 183CE or of section 183CF, on the licence of the corporate customs agent until the nominee dies or until the Comptroller deletes the name of the nominee from that licence under section 183CP, whichever occurs first.

Nominees
Inserted by
No. 110, 1980,
s. 11

183CN. (1) The Comptroller shall delete the name of a nominee of a corporate customs agent from the agents licence of that corporate customs agent if—

Removal of
nominee
Inserted by
No. 110, 1980,
s. 11

- (a) the nominee dies;
- (b) the nominee ceases to hold an agents licence;
- (c) the nominee ceases to act as nominee of the corporate customs agent;
- (d) the nominee requests the Comptroller, in writing, to delete his name from the licence; or
- (e) the name of the nominee is found to have been endorsed on the licence in circumstances where the endorsement should not have been made.

(2) Where the deletion of the name of a nominee from a licence of a corporate customs agent is required under sub-section (1), the corporate customs agent shall forthwith deliver the licence to the Comptroller for the purpose of having the deletion effected.

183CP. If the agents licence of a corporate customs agent ceases to comply with sub-section (2) of section 183C, the Comptroller may, by notice in writing served on the corporate customs agent, require the corporate customs agent to apply within such period as is specified in the notice, for such variation of the endorsements on the licence as would result in the licence complying with that sub-section.

Notice to
nominate
new nominee
Inserted by
No. 110, 1980,
s. 11

s. 183CQ

Division 4
inserted by
No. 110, 1980,
s. 11.

Investigation
of matters
relating to an
agents
licence

Inserted by
No. 110, 1980,
s. 11

Division 4—Suspension, revocation and non-renewal of licences

183CQ. (1) The Comptroller may give notice in accordance with this section to a customs agent if he has reasonable grounds to believe that—

- (a) the customs agent has been convicted of a prescribed offence;
- (b) the customs agent, being a natural person, is an undischarged bankrupt;
- (c) the customs agent, being a company, is in liquidation;
- (d) the customs agent has ceased to perform the duties of a customs agent in a satisfactory and responsible manner;
- (e) the customs agent is guilty of conduct that is an abuse of the rights and privileges arising from his licence;
- (f) the customs agent has not, within 28 days after the day prescribed for the payment of any fees, paid those fees;
- (g) the customs agent made a false or misleading statement in the application for the licence;
- (h) the customs agent has not complied with a condition imposed on the grant or renewal of the licence and, having been served with a notice under sub-section (8) of section 183CG in relation to the non-compliance with that condition, the customs agent has not, within the time specified in the notice, complied with that condition; or
- (j) in the case of a corporate customs agent—the customs agent has not, within the time specified in a notice under section 183CP, complied with that notice,

or it otherwise appears to him to be necessary for the protection of the revenue or otherwise in the public interest to give the notice.

(2) Without limiting the generality of paragraph (d) of sub-section (1), a customs agent shall be taken, for the purposes of that paragraph, to have ceased to perform the duties of a customs agent in a satisfactory and responsible manner if the documents prepared by the customs agent for the purposes of this Act contain errors that are unreasonable having regard to the nature or frequency of those errors.

(3) Notice in accordance with this section to a customs agent shall be in writing and shall be served, either personally or by post, on the customs agent.

(4) A notice in accordance with this section to a customs agent shall state—

- (a) the grounds on which the notice is given;
- (b) that the Comptroller intends forthwith to refer to the Committee, for investigation and report to the Minister, the question

s. 183CQ

whether the Minister should take action in relation to the licence under sub-section (1) of section 183CS;

- (c) the powers that the Minister may exercise in relation to a licence under sub-section (1) of section 183CS; and
- (d) the rights of the customs agent under sections 183J and 183S to take part in the proceedings before the Committee.

(5) Where the Comptroller gives notice in accordance with this section to a customs agent, he shall refer the question whether the Minister should take action in relation to the licence under sub-section (1) of section 183CS to the Committee, for investigation and report to the Minister.

(6) Where the Comptroller refers a question to the Committee under sub-section (5), he shall give particulars to the Committee of all the information in his possession that is relevant to the question so referred.

(7) Where a question is referred to the Committee under sub-section (5), the Committee shall, as soon as practicable, conduct an investigation into the question and make a report on the question to the Minister.

183CR. (1) Where the Comptroller gives notice in accordance with section 183CQ to a customs agent, he may, if he considers it necessary for the protection of the revenue or otherwise in the public interest to do so, suspend the licence of the customs agent pending the investigation and report of the Committee.

Interim
suspension
by
Comptroller
Inserted by
No. 110, 1980,
s. 11

(2) The Comptroller may suspend the agents licence of a customs agent in pursuance of sub-section (1) by—

- (a) including in the notice to the customs agent in accordance with section 183CQ a statement to the effect that the licence is suspended under that sub-section; or
- (b) giving further notice in writing to the customs agent to the effect that the licence is suspended under that sub-section,

such notice to include also a statement that any person whose interests are affected by the suspension may make an application to the Administrative Appeals Tribunal for a review of the decision to suspend the licence.

(3) A suspension of a licence by the Comptroller under sub-section (1) has effect until the suspension is revoked by the Comptroller or the Minister has dealt with the matter in accordance with section 183CS, whichever first occurs.

(4) Where an agents licence is suspended under this section, the Comptroller may at any time revoke the suspension.

s. 183CS

Powers of
Minister
Inserted by
No. 110, 1980,
s. 11

183CS. (1) Where the Minister, after considering a report under sub-section (7) of section 183CQ in relation to an agents licence, is—

- (a) satisfied in relation to the licence as to any of the matters mentioned in paragraphs (a) to (j) (inclusive) of sub-section (1) of section 183CQ; or
- (b) satisfied on any other grounds that it is necessary to do so for the protection of the revenue,

he may, by notice to the customs agent—

- (c) cancel the licence;
- (d) if the licence is about to expire—order that the licence not be renewed;
- (e) reprimand the customs agent;
- (f) in a case where the licence is not already suspended—suspend the licence for a period specified in the notice; or
- (g) in a case where the licence is already suspended—further suspend the licence for a period specified in the notice.

(2) Where the Minister, after considering a report under sub-section (7) of section 183CQ in relation to an agents licence, decides not to take any further action in the matter, he shall, by notice in writing to the customs agent, inform the customs agent accordingly, and, if the licence of the customs agent is suspended, he shall revoke the suspension.

(3) A notice under sub-section (1) shall—

- (a) be in writing;
- (b) be served, either personally or by post, on the holder of the licence;
- (c) shall set out the ground or grounds for the decision of the Minister; and
- (d) state that any person whose interests are affected by the decision of the Minister may make an application to the Administrative Appeals Tribunal for a review of that decision.

(4) The period for which the Minister may suspend or further suspend a licence under sub-section (1) may be a period expiring after the date on which the licence, if not renewed, would expire.

(5) Where the Minister orders under paragraph (d) of sub-section (1) that a licence not be renewed, he shall notify the appropriate Collector accordingly.

Effect of
Suspension
Inserted by
No. 110, 1980,
s. 11

183CT. (1) During a period in which an agents licence held by a natural person is suspended under this Division, the person shall not—

- (a) act as a customs agent; or
- (b) act as a nominee of a corporate customs agent.

s. 183CT

(2) During a period in which an agents licence held by a corporate customs agent is suspended under this Division—

- (a) the corporate customs agent shall not act as a customs agent; and
- (b) a nominee of the corporate customs agent shall not act as such a nominee.

183CU. For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a notice under this Division on a person who holds or held an agents licence, such a notice posted as a letter addressed to that person at the last address of that person known to the sender shall be deemed to be properly addressed.

Service of notices
Inserted by
No. 110, 1980,
s. 11

Division 5—National Customs Agents Licensing Advisory Committee

Division 5
(formerly
Division 4)
inserted by
No. 54, 1959,
s. 24; heading
substituted by
No. 110, 1980,
s. 12

183D. (1) There is established by this section a Committee by the name of the National Customs Agents Licensing Advisory Committee.

National
Customs
Agents
Licensing
Advisory
Committee
Substituted by
No. 110, 1980,
s. 13

(2) The functions of the Committee are—

- (a) to investigate and report on applications referred to it by the Comptroller under section 183CB;
- (b) to investigate and report on questions referred to it by the Comptroller under section 183CQ;
- (c) to advise the Minister in relation to the approval of courses of study under section 183CC; and
- (d) where the Minister requests the Committee to advise him on the standards that customs agents should meet in the performance of their duties and obligations as customs agents—to advise the Minister accordingly.

183DA. (1) The Committee shall consist of the following members:

- (a) the Chairman;
- (b) a member to represent customs agents;
- (c) a member to represent the Commonwealth.

Constitution
of
Committee
Inserted by
No. 110, 1980,
s. 13

(2) The Chairman shall be a person who—

- (a) is or has been a Stipendiary, Police, Special or Resident Magistrate of a State or Territory; or
- (b) in the opinion of the Minister, possesses special knowledge or skill in relation to matters that the Committee is to advise or report on.

s. 183DA

(3) A member referred to in paragraph (a) or (b) of sub-section (1) shall be appointed by the Minister for a period not exceeding 2 years but is eligible for re-appointment.

(4) The member referred to in paragraph (b) of sub-section (1) shall be appointed on the nomination of an organization that, in the opinion of the Minister, represents customs agents.

(5) The member referred to in paragraph (c) of sub-section (1) shall be the person for the time being holding, or performing the duties of, the office in the Department of Business and Consumer Affairs that the Minister specifies, in writing signed by him, to be the office for the purposes of this sub-section.

(6) The appointment of a member is not invalidated, and shall not be called in question, by reason of a deficiency or irregularity in, or in connection with, his nomination or appointment.

Remuneration
and
allowances
Inserted by
No. 110, 1980,
s. 13

183DB. (1) A member referred to in paragraph (a) or (b) of sub-section (1) of section 183DA shall be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A member referred to in paragraph (a) or (b) of sub-section (1) of section 183DA shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Acting
Chairman
Inserted by
No. 110, 1980,
s. 13

183DC. (1) Subject to sub-section (2), the Minister may appoint a person to act as Chairman—

- (a) during a vacancy in the office of Chairman; or
- (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is for any other reason, unable to perform the functions of his office.

(2) A person shall not be appointed to act as Chairman unless he is qualified, in accordance with sub-section (2) of section 183DA, to be appointed as Chairman.

(3) A person appointed to act as Chairman shall be paid such fees, allowances and expenses as the Minister determines.

Deputy
member
Inserted by
No. 110, 1980,
s. 13

183DD. (1) The Minister may appoint a person, on the nomination of an organization referred to in sub-section (4) of section 183DA, to be the deputy of the member referred to in paragraph (b) of sub-section (1) of that section during the pleasure of the Minister and the person so appointed shall, in the event of the absence of the member from a meeting

s. 183DD

of the Committee, be entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Committee.

(2) Where the Minister specifies an office in the Department of Business and Consumer Affairs for the purposes of this sub-section, the person for the time being holding, or performing the duties of, that office shall be the deputy of the member referred to in paragraph (c) of sub-section (1) of section 183DA and that person shall, in the event of the absence of that member from a meeting of the Committee, be entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Committee.

(3) A deputy of the member referred to in paragraph (b) of sub-section (1) of section 183DA shall be paid such fees, allowances and expenses as the Minister determines.

183E. The regulations may make provision for and in relation to the procedure of the Committee.

Procedure of Committees

Inserted by
No. 54, 1959,
s. 24; amended by
No. 110, 1980,
s. 31

183F. The Committee is not bound by legal rules of evidence but may inform itself on a matter referred to it under this part in such manner as it thinks fit.

Evidence

Inserted by
No. 54, 1959,
s. 24; amended by
No. 110, 1980,
s. 31

183G. The proceedings of the Committee shall be held in private.

Proceedings in private

Inserted by
No. 54, 1959,
s. 24; amended by
No. 110, 1980,
s. 31

183H. All questions before the Committee shall be decided according to the opinion of the majority of its members.

Determination of questions before a Committee

Inserted by
No. 54, 1959,
s. 24; amended by
No. 110, 1980,
s. 31

183J. (1) Where an application is referred to the Committee under section 183CB or a question is referred to the Committee under section 183CQ, the Chairman of the Committee shall cause a notice in writing of the reference of the application or question to the Committee, and of the time and place at which the Committee intends to hold an inquiry into the application or question, to be served on the person making the application or holding the licence to which the question relates, as the case may be, at least ten days before the date of the inquiry.

Customs agent affected by investigations to be given notice

Inserted by
No. 54, 1959,
s. 24
Sub-section (1)
amended by
No. 110, 1980,
s. 14

s. 183J

Amended by
No. 110, 1980,
ss. 14 and 31

(2) Subject to sub-section (3), the Committee shall afford the person on whom a notice has been served in pursuance of sub-section (1) an opportunity of examining witnesses, of giving evidence and calling witnesses on his behalf and of addressing the Committee.

Amended by
No. 28, 1974, s. 7;
No. 110, 1980,
s. 14

(3) Where the person on whom notice has been served in pursuance of sub-section (1) fails to attend at the time and place specified in the notice, the Committee may, unless it is satisfied that the person is prevented by illness or other unavoidable cause from so attending, proceed to hold the inquiry in his absence.

Added by
No. 110, 1980,
s. 14

(4) Where an application is referred to the Committee under section 183CB or a question is referred to the Committee under section 183CQ, the Chairman of the Committee may cause a notice in writing of the reference of the application or question to the Committee, and of the time and place at which the Committee intends to hold an inquiry into the application or question, to be served on such other persons who, in the opinion of the Chairman, have a special interest in, or are specially affected by, the inquiry.

Summoning of witnesses

Inserted by
No. 54, 1959,
s. 24

Sub-section (1)
amended by
No. 110, 1980,
s. 31

183K. (1) The Chairman of the Committee may, by writing under his hand, summon a person to attend before the Committee at a time and place specified in the summons and then and there to give evidence and to produce any books, documents and writings in his custody or control which he is required by the summons to produce.

Amended by
No. 110, 1980,
s. 31

(2) A person who has been summoned to attend before the Committee as a witness shall appear and report himself from day to day, unless excused by the Committee.

Amended by
No. 110, 1980,
s. 31

(3) The Committee may inspect books, documents or writings before it, and may retain them for such reasonable period as it thinks fit, and may make copies of such portions of them as are relevant to the inquiry.

Service of notices and summonses

Inserted by
No. 54, 1959,
s. 24; amended by
No. 64, 1981,
s. 37

183L. A notice or summons under this Part shall be served by delivering it personally to the person to be served or by sending it by pre-paid registered letter addressed to him at his last known place of abode or business or by leaving it—

- (a) at his last known place of abode with some person apparently an inmate of that place and apparently not less than 16 years of age; or
- (b) at his last known place of business with some person apparently employed at that place and apparently not less than 16 years of age.

Section 183M
repealed by
No. 110, 1980,
s. 15

* * * * *

s. 183N

183N. (1) The Committee may examine on oath a person appearing as a witness before the Committee, whether the witness has been summoned or appears without being summoned, and for that purpose a member of the Committee may administer an oath to a witness.

Committee may examine upon oath or affirmation

Inserted by No. 54, 1959, s. 24

Sub-section (1) amended by No. 110, 1980, s. 31

(2) Where a witness conscientiously objects to take an oath, he may make an affirmation that he conscientiously objects to take an oath and that he will state the truth, the whole truth and nothing but the truth to all questions that are asked him.

(3) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

183P. A person summoned to attend before the Committee as a witness shall not—

Offences by witness

Inserted by No. 54, 1959, s. 24; amended by No. 28, 1966, s. 4; No. 110, 1980, ss. 16 and 31

- (a) without reasonable cause fail to attend, after payment or tender to him of a reasonable sum for his expenses of attendance;
- (b) refuse to be sworn or to make an affirmation as a witness, or to answer any question when required to do so by a member of the Committee; or
- (c) without reasonable cause, refuse or fail to produce a book or document which he was required by the summons to produce.

Penalty: \$1,000.

183Q. A person is not excused from answering a question or producing a book or document when required to do so under section 183P on the ground that the answer to the question, or the production of the book or document, might tend to incriminate him or make him liable to a penalty, but his answer to any such question is not admissible in evidence against him in proceedings other than proceedings for—

Statements by witness

Substituted by No. 110, 1980, s. 17

- (a) an offence against paragraph (b) or (c) of section 183P; or
- (b) an offence in connection with the making by him of a statement in an examination before the Committee under section 183N.

183R. (1) A person who attends in obedience to a summons to attend as a witness before the Committee is entitled to be paid witness fees and travelling allowance according to the scale of fees and allowances payable to witnesses in the Supreme Court of the State or Territory in which he is required to attend or, in special circumstances, such fees and allowances as the Chairman of the Committee directs (less any amount previously paid to him for his expenses of attendance).

Witness fees

Inserted by No. 54, 1959, s. 24

Sub-section (1) amended by No. 216, 1973, s. 3; No. 110, 1980, s. 31

(2) The fees and allowances are payable—

- (a) in the case of a witness summoned at the request of the customs agent to whom the inquiry relates—by that customs agent; and
- (b) in any other case—by the Commonwealth.

s. 183s

Representation by
counsel, &c.

Inserted by
No. 54, 1959,
s. 24

Sub-section (1)
amended by
No. 110, 1980,
s. 31

Amended by
No. 110, 1980,
s. 31

183S. (1) In an inquiry before the Committee, the customs agent to whom the inquiry relates and the Minister are each entitled to be represented by a barrister or solicitor or, with the approval of the Committee, by some other person.

(2) A barrister, solicitor or other person appearing before the Committee may examine or cross-examine witnesses and address the Committee.

Protection of
members

Inserted by
No. 54, 1959,
s. 24

Sub-section (1)
amended by
No. 110, 1980,
s. 31

183T. (1) An action or proceeding, civil or criminal, does not lie against a member of the Committee for or in respect of an act or thing done, or report made, in good faith by the member of the Committee in his capacity as a member.

(2) An act or thing shall be deemed to have been done in good faith if the member or Committee by whom the act or thing was done was not actuated by ill-will to the person affected or by any other improper motive.

Protection of
barristers,
witnesses,
&c.

Inserted by
No. 54, 1959,
s. 24

Sub-section (1)
amended by
No. 110, 1980,
s. 31

183U. (1) A barrister, solicitor or other person appearing before the Committee has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(2) A witness summoned to attend or appearing before the Committee has the same protection as a witness in proceedings in the High Court.

PART XII—OFFICERS

Division 1—Powers of Officers

Ships, boats
and aircraft
to bring to or
land

Amended by
No. 12, 1923, s. 2;
No. 108, 1952,
s. 20

184.³ The commander or officer in charge of any ship boat or aircraft in His Majesty's service or in the service of the Commonwealth or Customs, such ship boat or aircraft having hoisted and carrying the proper ensign and pendant or Customs flag, may chase any ship or aircraft which does not bring to or land at the airport when lawfully signalled or required to do so and may (after having fired a gun as a signal) fire at or into such ship or aircraft to compel her to bring to or land at the airport.

s. 185

185.³ Any officer may require the master of any ship or the pilot of any aircraft hovering within three nautical miles of the coast or of land to depart, and if such ship or aircraft shall fail to depart accordingly within twelve hours thereafter any officer may board and bring such ship or aircraft into port or airport and search her.

Officers may board ships and aircraft hovering on coast

Amended by
No. 12, 1923, s. 2;
No. 7, 1934, s. 16;
No. 108, 1952,
s. 20; No. 28,
1966, s. 4; No. 54,
1967, s. 10

The Collector may examine all persons on board of such ship or aircraft and they shall each thereupon answer questions relating to the ship or aircraft and her cargo crew passengers stores and voyage and produce documents relating to the ship or aircraft and her cargo.

Penalty: Five hundred dollars.

186. Any officer may open packages and examine weigh mark and seal any goods subject to the control of the Customs, and the expense of the examination including the cost of removal to the place of examination shall be borne by the owner.

Examine all goods

187. Any officer may—

(1) Board any ship or aircraft.

(2) Search any ship or aircraft.

(3) Secure any goods on any ship or aircraft.

Power to board and search ships and aircraft

Amended by
No. 12, 1923,
s. 27; No. 64,
1981, s. 37

188. The power of an officer to board shall extend to staying on board any ship or aircraft and the Collector may station an officer on board any ship or aircraft, and the master or pilot shall provide sleeping accommodation in the cabin and suitable and sufficient food for such officer.

Boarding

Amended by
No. 12, 1923, s. 2;
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

Penalty: \$250.

189. The power of an officer to search shall extend to every part of any ship or aircraft, and shall authorize the opening of any package, locker, or place and the examination of all goods.

Searching

Amended by
No. 12, 1923,
s. 28; No. 64,
1981, s. 37

190. The power of an officer to secure any goods shall extend to fastening down hatchways and other openings into the hold and locking up, sealing, marking or otherwise securing any goods.

Securing goods

Amended by
No. 110, 1980,
s. 18

191. No fastening, lock, mark, or seal placed by an officer upon any goods or upon any door hatchway opening or place upon any ship or aircraft shall be opened, altered, broken or erased, except by authority, whilst the goods upon which the fastening, lock, mark, or seal is placed or which are intended to be secured thereby shall remain subject to the control of the Customs.

Seals, &c., not to be broken

Amended by
No. 12, 1923, s. 2;
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

Penalty: \$250.

s. 192

Seals, &c.,
on ship or
aircraft in
port bound
to another
port within
Common-
wealth

Amended by
No. 12, 1923, s. 2;
No. 108, 1952,
s. 20; No. 28,
1966, s. 4; No. 54,
1967, s. 10;
No. 64, 1981,
s. 37

192. No fastening, lock, mark, or seal placed by an officer upon any goods or upon any door, hatchway, opening, or place for the purpose of securing any stores upon any ship or aircraft which has arrived in any port or airport from parts beyond the seas and which is bound to any other port or airport within the Commonwealth shall be opened, altered, broken, or erased except by authority; and if any ship or aircraft enters any port or airport with any such fastening, lock, mark, or seal opened, altered, broken, or erased contrary to this section, the master or pilot shall be guilty of an offence against this Act.

Penalty: \$500.

Officers may
patrol coasts,
&c.

193. Any officer and any person acting in his aid when on duty may patrol upon and pass freely along and over any part of the coast or any railway or the shores, banks, or beaches of any port by harbour lake or river.

Ships on
service may
be moored in
any place

Amended by
No. 64, 1981,
s. 37

194. The officer in charge for the time being of any ship employed in the service of the Customs may haul any such ship upon any part of the coast or the shores banks or beaches of any port bay harbour lake or river and may moor any such ship thereon and continue such ship so moored as aforesaid for such time as he shall deem necessary.

Power to
question
passengers;
&c.

Substituted by
No. 110, 1980,
s. 19

195. (1) An officer of Customs may question—

- (a) any person who is on board a ship or an aircraft;
- (b) any person who has, or who the officer has reason to believe has, got off a ship or out of an aircraft; or
- (c) any person who the officer has reason to believe is about to board a ship or an aircraft,

as to whether that person or any child or other person accompanying him has on his person, in his baggage or otherwise with him any—

- (d) dutiable goods;
- (e) excisable goods;
- (f) goods the importation or exportation of which is prohibited by this Act or any other law of the Commonwealth; or
- (g) goods the importation or exportation of which is subject to restrictions, or to compliance with any conditions, under this Act or any other law of the Commonwealth.

(2) A person shall answer questions put to him in pursuance of sub-section (1).

Penalty: \$1,000.

196. If any officer of Customs or of police shall have reasonable cause to suspect that any person is unlawfully carrying or has any goods subject to the control of the Customs or any prohibited imports or any prohibited exports secreted about him the following consequences shall ensue:

Suspected persons—detention and search

Amended by No. 36, 1910, s. 7; No. 61, 1981, s. 115

- (1) The officer of Customs or of police may detain and search the suspected person.
- (2) Before the suspected person shall be searched he may require to be taken before a Justice or the Collector.
- (3) The Justice or Collector may order the suspected person to be searched or may discharge him without search.

But females shall only be searched by a female searcher appointed by the Justice or Collector.

196A and 196B.

* * * * *

196C. (1) Where a person requests an officer of Customs to approve the delivery of goods for home consumption in accordance with section 71A, the officer may—

Power to question persons claiming packages

Inserted by No. 64, 1981, s. 25

- (a) request the person to state his full name and residential address;
- (b) ask the person whether he is the owner of the goods;
- (c) where the person states that he is not the owner of the goods, request the person to state the full name and residential address of the owner of the goods; and
- (d) request the person to produce evidence of the correctness of the information given by him in compliance with a request made of him in pursuance of paragraph (a) or (c).

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a request made of him, or to answer a question put to him, in pursuance of sub-section (1).

Penalty: \$1,000.

(3) Where a person refuses or fails to comply with a request made of him, or to answer a question put to him, by an officer of Customs in pursuance of sub-section (1), the officer may—

- (a) detain the person for the purposes of establishing his identity; or
- (b) if the officer believes on reasonable grounds that there is no reasonable excuse for the person refusing or failing to so comply, detain the person and take him, without undue delay, before a Magistrate to be charged with an offence against sub-section (2).

(4) In this section, "owner", in relation to goods, means a person who has an interest in the goods.

s. 197

Power to stop vehicles

Amended by
No. 28, 1966,
s. 4; No. 54,
1967, s. 10;
No. 64, 1981,
s. 37

197. Any officer of Customs or police upon reasonable suspicion may stop and search any carriage for the purpose of ascertaining whether any dutiable goods are contained therein and the driver of any carriage shall stop and permit such search whenever required by any such officer.

Penalty: \$100.

Power to stop and search carriages carrying petrol, &c.

Inserted by
No. 111, 1960,
s. 8

197A. (1) The powers conferred by this section are conferred, and shall only be exercised, for the purpose of enabling officers of Customs to ascertain whether a carriage is carrying petrol or any other petroleum oil in respect of which any duty of Customs or duty of Excise is payable.

(2) An officer of Customs may request the driver of any carriage that he has reasonable cause to suspect is carrying petrol or any other petroleum oil to stop the carriage.

(3) The driver of a carriage that is, or is so constructed as to be capable of, carrying petrol or any other petroleum oil shall, when requested by an officer of Customs, stop the carriage.

(4) An officer of Customs may search any carriage that he has reasonable cause to suspect is carrying petrol or any other petroleum oil and inspect any documents in the possession of the driver relating to the goods being carried in the carriage.

Amended by
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

(5) The driver of a carriage that is, or is so constructed as to be capable of, carrying petrol or any other petroleum oil shall, when requested by an officer of Customs, permit the officer to search the carriage and inspect any documents in the possession of the driver relating to the goods being carried in the carriage.

Penalty: \$100.

Writs of Assistance

Amended by
No. 14, 1968, s. 3;
No. 216, 1973,
s. 3; No. 19, 1979,
s. 123

198. The Supreme Court of any State or Territory having jurisdiction in the State or Territory where the application is made may grant a Writ of Assistance in the form of Schedule III hereto upon application made to him for that purpose by a Minister of State for the Commonwealth or by the Comptroller or the Collector of Customs for a State or Territory, and such writ unless superseded shall be in force so long as any person named therein remains an officer of Customs whether in the same capacity or not.

Customs Warrants

Substituted by
No. 48, 1963,
s. 20
Sub-section (1)
amended by
No. 14, 1968, s. 3;
No. 28, 1974, s. 7

199. (1) The Comptroller, or the Collector of Customs for a State or Territory, may issue to any officer of Customs or officer of police a Customs Warrant, in accordance with the form in Schedule IV, marked with a Customs stamp.

(2) A Customs Warrant issued under the last preceding sub-section remains in force until the expiration of the period specified in the Warrant or until the Warrant is revoked, whichever first occurs.

s. 199

(3) A Customs Warrant issued by a Collector of Customs for a State has force only in the State and a Customs Warrant issued by the Collector of Customs for the Northern Territory has force only in the Northern Territory.

Amended by
No. 14, 1968, s. 3

200. Any officer having with him a Writ of Assistance or a Customs Warrant in the form of Schedule IV hereto, or any officer of police having with him any such Warrant, may at any time in the day or night enter into and search any house premises or place and may break open the same and search any chests trunks or packages in which goods may be or are supposed to be.

Power to
search
Amended by
No. 12, 1923,
s. 29

201. Any officer acting under a Writ of Assistance or Customs Warrant in the form of Schedule IV hereto may take with him and have the assistance of any police officer and such assistants as he may think necessary.

Power to
take
assistants
Amended by
No. 12, 1923,
s. 30

202. Any person lawfully making any seizure under any Customs Act may call upon any person present in the King's name to assist him, and such assistance shall be rendered accordingly.

Power to call
for aid
Amended by
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

Penalty: \$100.

203. (1) In this section, "authorized person" means—

- (a) a member of the Defence Force;
- (b) an officer of Customs; or
- (c) an officer of police.

Power to
seize goods
Substituted by
No. 64, 1981,
s. 26

(2) An authorized person may seize any forfeited goods or any goods that he believes on reasonable grounds are forfeited goods.

(3) Without limiting the generality of sub-section (2), the power to seize goods under that sub-section may be exercised at sea or in any other waters.

204. (1) In this section, "approved place", in relation to goods, means a place approved by a Collector as a place for the storage of a class or kind of goods in which those goods are included.

Seized goods
to be secured
Substituted by
No. 64, 1981,
s. 26

(2) Where an officer of Customs seizes any goods other than narcotic-related goods under this Act, he shall take those goods to an approved place.

(3) Where a person other than an officer of Customs seizes any goods other than narcotic-related goods under this Act, he shall forthwith deliver the goods into the custody of an officer of Customs.

(4) Where a person other than a member of the Australian Federal Police seizes any narcotic-related goods under this Act, he shall forthwith

s. 204

deliver the goods into the custody of a member of the Australian Federal Police.

(5) Where goods are delivered to an officer of Customs in accordance with sub-section (3), the officer shall—

- (a) except where paragraph (b) applies—deliver the goods to an approved place; or
- (b) where the goods are delivered to him at an approved place, leave the goods at that place.

Seized goods
Substituted by
No. 64, 1981,
s. 26

205. (1) In this section—

“appropriate person” means—

- (a) in relation to goods other than narcotic-related goods—
 - (i) the Comptroller;
 - (ii) a Collector of Customs for a State or Territory; or
 - (iii) a principal officer of Customs; and
- (b) in relation to narcotic-related goods—
 - (iv) the Commissioner of Police; or
 - (v) a Deputy Commissioner of Police;

“responsible person” means—

- (a) in relation to goods other than narcotic-related goods—the officer of Customs who seized the goods or to whom the goods were delivered under sub-section (3) of section 204; or
- (b) in relation to narcotic-related goods—the member of the Australian Federal Police who seized the goods or to whom the goods were delivered under sub-section (4) of section 204.

(2) Subject to this section, where goods are seized under section 203, the responsible person shall, as soon as is practicable, serve on the owner of the goods or the person who had possession, custody or control of the goods immediately before they were seized, either personally or by post, a notice in writing—

- (a) identifying the goods;
- (b) stating that the goods have been seized under section 203 and specifying the reason for the seizure;
- (c) setting out the terms of the provisions of sub-section (6); and
- (d) specifying, and setting out the address of, an appropriate person and stating that any notice under sub-section (6) is to be given to that person.

(3) If a notice under sub-section (2) in respect of a ship or aircraft cannot conveniently be served in a manner required by that sub-section,

that notice may be served by being affixed to a prominent part of the ship or aircraft.

(4) A responsible person is not required to serve a notice under sub-section (2) in relation to goods if, after making such inquiries as he thinks appropriate, he does not have sufficient information to enable him to serve the notice.

(5) Where—

- (a) a notice under sub-section (2) has not been served in respect of goods seized under section 203; and
- (b) within 30 days after the day on which the goods were seized, a person who claims to be a person entitled to be served with that notice gives an appropriate person sufficient information, in writing, to enable that notice to be served,

that appropriate person shall forthwith convey that information to the responsible person.

(6) Where a notice under sub-section (2) is served in respect of goods seized under section 203, the goods shall be deemed to be condemned as forfeited to the Crown unless, within 30 days after the day on which the notice was served, the owner of the goods or the person who had possession, custody or control of the goods immediately before they were seized gives notice, in writing, to the appropriate person specified in the notice under sub-section (2) stating that he claims the goods.

(7) Where, within 30 days after the day on which goods were seized under section 203—

- (a) a notice has not been served in respect of the goods by virtue of sub-section (4); and
- (b) a person claiming to be a person entitled to be served with that notice has not given an appropriate person sufficient information to enable that notice to be served,

the goods shall, on the expiration of that period of 30 days, be deemed to be condemned as forfeited to the Crown.

(8) Where a notice under sub-section (2) is served in respect of goods seized under section 203, the goods shall, for the purposes of this Act, be taken to be in the possession of the appropriate person specified in the notice.

206. Notwithstanding sub-sections (6) and (7) of section 205, any live animal or goods of a perishable or hazardous nature seized under section 203 may be sold or destroyed in accordance with the directions of—

- (a) where the animal is, or the goods are, goods other than narcotic-related goods—a Collector; or
- (b) in any other case—the Commissioner of Police or a Deputy Commissioner of Police.

Destruction
of perishable
goods
Substituted by
No. 64, 1981
s. 26

s. 207

Dealing with
seized ships
that are
unseaworthy
Substituted by
No. 64, 1981,
s. 26

207. (1) This section applies to a ship—

- (a) that is in the possession of a Collector or a member of the Australian Federal Police by reason of having been seized as forfeited;
- (b) that has not been condemned; and
- (c) that the Collector or member has not been ordered by a court to deliver to another person.

(2) Where a Collector or a member of the Australian Federal Police in possession of a ship to which this section applies is satisfied that the ship is so unseaworthy that the custody or maintenance of the ship creates serious difficulties, the Collector or member may sell the ship or cause the ship to be destroyed.

Seized goods
may be
returned on
security
Substituted by
No. 64, 1981,
s. 26

208. (1) The Comptroller or a Collector of Customs for a State or Territory may authorize any goods other than narcotic-related goods seized under section 203 to be delivered to a person claiming those goods under sub-section (6) of section 205 on that person giving security to pay the value of those goods if they are condemned as forfeited to the Crown.

(2) The Commissioner of Police or a Deputy Commissioner of Police may authorize any narcotic-related goods, other than narcotic goods, seized under section 203 to be delivered to a person claiming those goods under sub-section (6) of section 205 on that person giving security to pay the value of those goods if they are condemned as forfeited to the Crown.

Collector
may retain
goods and
require
owner to
proceed for
restoration
Inserted by
No. 64, 1981,
s. 26

208A. (1) Where notice under sub-section (6) of section 205 is given in respect of any goods seized under section 203, the Collector or member of the Australian Federal Police who is in possession of the goods may—

- (a) retain possession of the goods without taking any proceedings for the condemnation of the goods; and
- (b) may serve on the person who gave that notice, either personally or by post, a notice in writing requiring him to bring an action against him within 4 months of the service of the notice for the recovery of the goods or of the security given under section 206 in respect of the goods, as the case requires.

(2) Where—

- (a) a notice under paragraph (b) of sub-section (1) in relation to goods is given; and
- (b) the person to whom the notice was given does not, within 4 months after the service of the notice, bring an action for the recovery of the goods or of the security in respect of the goods, as the case requires,

the goods shall be deemed to be condemned as forfeited to the Crown without any further proceedings.

s. 208B

208B. (1) Notwithstanding that goods have been sold or destroyed under section 206 or 207, a person may claim the goods under section 205, and proceedings for the recovery or condemnation of the goods may be instituted or continued, as if the goods were in the condition they were in immediately before they were sold or destroyed and remained in the possession of a Collector or a member of the Australian Federal Police.

Proceedings relating to goods sold
Inserted by
No. 64, 1981,
s. 26

(2) If, in any proceedings for the recovery or condemnation of goods sold or destroyed under section 206 or 207, the court decides that it would, but for the sale or destruction, have ordered that the goods be delivered to a person, the court shall order the payment by the Commonwealth to that person of an amount equal to—

- (a) where the goods have been sold—the proceeds of the sale; or
- (b) where the goods have been destroyed—the market value of the goods at the time of their destruction.

208C. For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a notice under sub-section (2) of section 205 or paragraph (b) of sub-section (1) of section 208A on a person, such a notice posted as a letter addressed to that person at the last address of that person known to the sender shall be deemed to be properly addressed.

Service by post
Inserted by
No. 64, 1981,
s. 26

208D. All goods seized under section 203 that are condemned, or deemed under sub-section (6) or (7) of section 205 or sub-section (2) of section 208A to be condemned, as forfeited to the Crown shall be dealt with and disposed of in accordance with the directions of—

Disposal of forfeited goods
Inserted by
No. 64, 1981,
s. 26

- (a) in the case of goods other than narcotic-related goods—the Comptroller; or
- (b) in the case of narcotic-related goods—the Commissioner of Police or a Deputy Commissioner of Police.

208E. Where a ship or aircraft is sold under section 207 or sold or otherwise disposed of under section 208D, the ship or aircraft may be sold or disposed of subject to conditions, including, without limiting the generality of the foregoing—

Sales subject to conditions
Inserted by
No. 64, 1981,
s. 26

- (a) a condition that, before the expiration of a period specified in the condition, the ship or aircraft is to be exported from Australia; or
- (b) a condition that, before the expiration of a period specified in the condition, the ship or aircraft is to be broken up.

s. 209

Power to
impound
certain
forfeited
goods and
release them
on payment
of duty and
penalty.
Substituted by
No. 110, 1980,
s. 22

209. (1) This section applies to dutiable goods that are forfeited by virtue of paragraph (a), (g), (i), (o), (p) or (q) of sub-section (1) of section 229 (including forfeited by virtue of the operation of any of those paragraphs and section 230), other than goods that are prohibited imports.

(2) Subject to sub-section (3), where an officer finds goods that are, or that he has reason to believe are, goods to which this section applies in the course of a search of the baggage of a person who has arrived in Australia from a place outside Australia, the officer may, in lieu of seizing the goods under section 203, impound the goods.

(3) An officer shall not exercise his powers under sub-section (2) to impound goods found in the course of a search if, in the opinion of the officer, the total of the amounts of duty sought to be evaded in respect of goods to which this section applies found in the course of that search exceeds \$500.

(4) Goods impounded under this section shall be taken to such place of security as the Collector directs.

(5) Where an officer impounds goods under this section, he shall as soon as is practicable, but not later than 7 days after the day on which the goods were impounded, serve on the owner of the goods, either personally or by post, a notice in writing—

(a) identifying—

(i) where the goods are an article, the article;

(ii) where the goods consist of separate articles, each of those articles; or

(iii) in any other case, the goods,

and stating that the article, articles or goods so identified have been impounded under this section;

(b) setting out the amount of duty demanded in respect of the article, each of the articles, or the goods, identified in the notice;

(c) setting out the date on which the goods were impounded;

(d) setting out the terms of, or adequate particulars of the provisions of, sub-sections (6) and (7); and

(e) specifying the address at which payment under sub-section (6) may be made in respect of the goods.

(6) Where the owner of an article or goods identified in a notice served under sub-section (5) pays to the Collector, at the address for payment shown in the notice and within 21 days after the day on which the notice was served, the duty demanded in respect of the article or goods (not being a payment under protest in accordance with section 167) together with an amount of penalty equal to the amount of that duty—

- (a) the Collector shall authorize the delivery of the article or goods to the owner;
- (b) the article or goods cease to be forfeited; and
- (c) proceedings shall not be brought for any offence against this Act in relation to the importation of the article or goods.

(7) Where the owner of an article or goods identified in a notice served under sub-section (5) does not pay duty and penalty in respect of the article or goods in accordance with sub-section (6), the article or goods shall be deemed to have been seized under section 203 on the expiration of the last day of the period during which that duty and penalty were required to be paid and to have been so seized by the officer who served the notice.

(8) Section 240 does not apply in relation to a penalty under this section.

(9) Neither the Commonwealth nor an officer or other person is under any liability in relation to the impounding of any goods under this section for which there was reasonable cause.

(10) For the purpose of the application of section 29 of the *Acts Interpretation Act* 1901 to the service by post on the owner of goods of a notice under sub-section (5), such a notice posted as a letter addressed to the owner at his last address known to the officer required to serve the notice shall be deemed to be properly addressed.

(11) A reference in this section to the baggage of a person who has arrived in Australia shall be read as including a reference to goods on his person or otherwise with him.

(12) A reference in this section to a search of the baggage of a person shall be read as including a reference to a search of such part of the baggage of a person as is available for search at a particular time.

210. (1) An officer of Customs or police may without warrant arrest any person who he has reasonable grounds to believe is guilty of—

- (a) committing, or attempting to commit, or of being concerned in the commission of, any offence against section 231 or 233; or
- (b) committing an offence against section 233B.

Persons suspected of smuggling, &c.
Substituted by No. 36, 1910, s. 9
Sub-section (1) substituted by No. 92, 1979, s. 7

(1A) An officer of Customs or police may, without warrant, arrest a person if he has reasonable ground for believing that the person has committed the offence of assaulting an officer in the execution of his duties.

Inserted by No. 54, 1959, s. 25

(2) No person shall resist, obstruct, or prevent the arrest of any person in pursuance of this section.

Penalty: \$100.

Amended by No. 28, 1966, s. 4; No. 54, 1967, s. 30; No. 64, 1981, s. 37

s. 212

Section 211
repealed by No.
54, 1959, s. 26

* * * * *

Arrested
persons to go
before
Justices

212. Every person arrested may be detained until such time as he can without undue delay be taken before a Justice.

Powers of
Justices with
offenders

213. Any Justice before whom any person is brought under this Act may—

- (1) Commit such person to gaol until he can be brought before Justices to be dealt with according to law; or
- (2) Admit him to bail upon his giving sufficient security for his appearance before Justices at the time and place appointed for the hearing of the charge.

Production
of
documents,
&c., in cases
of seizure

Sub-section (1)
amended by
No. 56, 1950, s. 8;
No. 28, 1966, s. 4;
No. 54, 1967,
s. 10; No. 64,
1981, s. 37

214. (1) Whenever information in writing has been given on oath to the Collector that goods have been unlawfully imported exported undervalued or entered or illegally dealt with, or that it is intended to unlawfully import export undervalue enter or illegally deal with any goods, or whenever any goods have been seized or detained, the owner shall immediately upon being required so to do by the Collector produce and hand over to him all books and documents relating to the goods so imported exported entered seized or detained undervalued or illegally dealt with, or intended to be unlawfully imported exported undervalued entered or illegally dealt with, and of all other goods imported or exported by him at any time within the period of 5 years immediately preceding such request seizure or detention, and shall also produce for the inspection of the Collector or such other officer as he may authorize for that purpose and allow such Collector or officer to make copies of or extracts from all books or documents of any kind whatsoever wherein any entry or memorandum appears in any way relating to any such goods.

Penalty: \$1,000.

Substituted by
No. 48, 1963,
s. 22; amended by
No. 14, 1968, s. 3;
No. 28, 1974, s. 7

(2) For the purposes of this section, the Comptroller or the Collector of Customs for a State or Territory may issue to any officer of Customs or officer of police a Customs Warrant, in accordance with the form in Schedule V, marked with a Customs stamp.

Inserted by No.
48, 1963, s. 22

(2A) A Customs Warrant issued under the last preceding sub-section remains in force for one month after the date of the Warrant unless sooner revoked.

Inserted by No.
48, 1963, s. 22;
amended by No.
14, 1968, s. 3

(2B) A Customs Warrant issued by a Collector of Customs for a State has force only in the State and a Customs Warrant issued by the Collector of Customs for the Northern Territory has force only in the Northern Territory.

s. 214

(3) If any person fails to comply with a requirement by the Collector under this section, an officer of Customs or officer of police, having with him a Customs Warrant in the form of Schedule V hereto, may, at any time of the day or night, break open and enter into any house, premises or place in which any books or documents relating to the goods are or are supposed to be, and search—

Added by No. 12,
1923, s. 31;
amended by No.
48, 1963, s. 22

- (a) the house, premises or place;
- (b) any person therein or thereon; and
- (c) any chests, trunks or packages therein or thereon,

and take possession of, remove and impound any of those books and documents which are found.

215. The Collector may impound or retain any document presented in connexion with any entry or required to be produced under this Act, but the person otherwise entitled to such document shall in lieu thereof be entitled to a copy certified as correct by the Collector and such certified copy shall be received in all courts as evidence and of equal validity with the original.

Collector
may
impound
documents

216.³ The Collector may require from the owner of any goods proof by declaration or the production of documents that the goods are owned as claimed and are properly described valued or rated for duty and the Collector may refuse to deliver the goods or to pass any entry relating thereto pending such proof.

Collector
may require
further proof
of proper
entry

217. If any document in a foreign language be presented to any officer for any purpose connected with Customs business, the Collector may require to be supplied with an English translation to be made at the expense of the owner by such person as the Collector may approve or to be verified as he may require.

Translations
of foreign
invoices

218. Samples of any goods under the control of the Customs may for any purpose deemed necessary by the Collector be taken utilized and disposed of by any officer in manner prescribed.

Customs
samples

219. In all cases not herein otherwise provided for the Collector may exercise any power exercisable by the Customs.

General
power of
Collector

*Division 1A—The Use of Listening Devices in relation to Narcotics
Offences*

Division 1A
inserted by No.
92, 1979, s. 8

219A. (1) In this Division—

“Judge” means—

Interpret-
ation
Inserted by No.
92, 1979, s. 8

- (a) a Judge of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory;

s. 219A

- (b) a Judge of the Supreme Court of a State in respect of whom an appropriate arrangement in force under section 11 is applicable; or
- (c) a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in paragraph (a) and in respect of whom an appropriate arrangement in force under section 11 is applicable;

"listening device" means any instrument, device or equipment capable of being used, whether alone or in conjunction with any other instrument, device or equipment, to record or listen to spoken words;

"narcotics offence" means an offence punishable as provided by section 235.

(2) In this Division, unless the contrary intention appears—

- (a) a reference to narcotics inquiries that are being made by members of the Australian Federal Police shall be read as a reference to—
 - (i) inquiries that are being made by members of the Australian Federal Police in relation to a narcotics offence that has been committed or is reasonably suspected of having been committed; or
 - (ii) if there are circumstances reasonably giving rise to the suspicion that a narcotics offence is likely to be committed—inquiries that are being made by members of the Australian Federal Police in relation to the likely commission of that offence; and
- (b) a reference to narcotics inquiries that have been made by members of the Australian Federal Police shall be read as a reference to—
 - (i) inquiries that have been made by members of the Australian Federal Police in relation to a narcotics offence that has been committed or was reasonably suspected of having been committed; or
 - (ii) if there have been circumstances that reasonably gave rise to the suspicion that a narcotics offence was likely to be committed—inquiries that have been made by members of the Australian Federal Police in relation to the likely commission of that offence.

219B. (1) It is unlawful for a member of the Australian Federal Police to use, for the purposes of narcotics inquiries that are being made by members of the Australian Federal Police, a listening device for the purpose of listening to or recording words while they are being spoken by a person unless—

Amended by No.
180, 1979, s. 13

Use of
listening
devices

Inserted by No.
92, 1979, s. 8

Sub-section (1)
amended by No.
180, 1979, s. 13

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- (a) he is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard;
- (b) not being a person permitted to listen to or record the words under paragraph (a), he does so with the consent, express or implied, of such a person; or
- (c) he does so in accordance with a warrant issued under this Division.

(2) It is unlawful for a person acting by arrangement with a member of the Australian Federal Police to use, for the purpose of narcotics inquiries that are being made by members of the Australian Federal Police, a listening device for the purpose of listening to or recording words while they are being spoken by a person unless he is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard.

Amended by No. 180, 1979, ss. 4 and 13

(3) It is the duty of the Commissioner of Police to take reasonable steps to ensure that sub-sections (1) and (2) are not contravened.

Amended by No. 180, 1979, s. 13

(4) Notwithstanding any law of a State or Territory—

Amended by No. 180, 1979, s. 13

- (a) a member of the Australian Federal Police does not act unlawfully by reason only of using a listening device as referred to in sub-section (1) in circumstances to which paragraph (a), (b) or (c) of that sub-section is applicable; and
- (b) a person acting by arrangement with a member of the Australian Federal Police does not act unlawfully by reason only of using a listening device as referred to in sub-section (2) in circumstances in which the use of that device is not declared to be unlawful by that sub-section.

(5) Where, upon application being made to a Judge by a member of the Australian Federal Police for the issue of a warrant under this section authorizing the use of a listening device in relation to a particular person, the Judge is satisfied, by information on oath, that—

Amended by No. 180, 1979, s. 13

- (a) the person has committed, or is suspected on reasonable grounds of having committed, or of being likely to commit, a narcotics offence; and
- (b) the use by members of the Australian Federal Police of a listening device to listen to or record words spoken by or to that person will, or is likely to, assist members of the Australian Federal Police in or in connection with—
 - (i) inquiries that are being made in relation to a narcotics offence that the person has committed or is reasonably suspected of having committed; or

s. 219B

- (ii) if there are circumstances reasonably giving rise to the suspicion that the person is likely to commit a narcotics offence—inquiries that are being made in relation to the likely commission, by that person, of that offence,

the Judge may, by warrant under his hand in accordance with the prescribed form, authorize members of the Australian Federal Police, subject to any conditions or restrictions that he sees fit to specify in the warrant, to use a listening device for the purpose of listening to or recording words spoken by, to or in the presence of that person, and such a warrant may authorize members of the Australian Federal Police to enter any premises in which the person is, or is likely to be, for the purpose of installing, maintaining, using or recovering a listening device or a part of a listening device.

(6) A Judge may grant a warrant under sub-section (5) authorizing the use of a listening device for the purpose of listening to or recording words spoken by, to or in the presence of a person anywhere in Australia.

Amended by No.
180, 1979, s. 13

(7) Where, upon application being made to a Judge by a member of the Australian Federal Police for the issue of a warrant under this section authorizing the use of a listening device in relation to particular premises, the Judge is satisfied, by information on oath, that—

- (a) there are reasonable grounds for suspecting that the premises have been, or are likely to be, used in connection with the commission of a narcotics offence; and
- (b) the use by members of the Australian Federal Police of a listening device to listen to or record words spoken by or to persons in those premises will, or is likely to, assist members of the Australian Federal Police in, or in connection with, inquiries that are being made in relation to the use, or likely use, of the premises in connection with the commission of a narcotics offence,

the Judge may, by warrant under his hand in accordance with the prescribed form, authorize members of the Australian Federal Police, subject to any conditions or restrictions that he sees fit to specify in the warrant, to use a listening device for the purpose of listening to or recording words spoken by or to any person while the person is in those premises, and such a warrant may authorize members of the Australian Federal Police to enter those premises for the purpose of installing, maintaining, using or recovering a listening device or a part of a listening device.

(8) A Judge may grant a warrant under sub-section (7) authorizing the use of a listening device in respect of premises situated anywhere in Australia.

(9) Where a warrant under this section authorizes entry on premises, the warrant shall state whether entry is authorized to be made at any time of the day or night or only during specified hours and may, if the Judge issuing the warrant thinks fit, provide that entry may be made without

s. 219B

permission first being sought or demand first being made, and authorize measures that he is satisfied are necessary for that purpose.

(10) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 6 months.

(11) Sub-section (10) shall not be construed as preventing the issue of any further warrant.

(12) Nothing in this section, or in a warrant under this section, applies to or in relation to the use of a listening device for a purpose that would, for the purposes of the *Telecommunications (Interception) Act* 1979, constitute the interception of a communication passing over a telecommunications system controlled by the Australian Telecommunications Commission.

Substituted by
No. 116, 1979,
s. 3

219C. Information furnished to a Judge for the purposes of sub-section (5) or (7) of section 219B—

- (a) may be given orally or otherwise; and
- (b) shall include the facts and other grounds on which the applicant considers it necessary that the warrant should be issued.

Information
to be given in
support of
application
for warrant
Inserted by No.
92, 1979, s. 8

219D. (1) The authority conferred by a warrant issued under section 219B on members of the Australian Federal Police shall be exercised only by the Commissioner of Police and members of the Australian Federal Police approved, for the purposes of that warrant or of warrants issued under that section, by him or by an authorized member of the Australian Federal Police.

Exercise of
powers under
warrant
Inserted by No.
92, 1979, s. 8
Sub-section (1)
amended by No.
180, 1979, ss. 5
and 13

(2) In sub-section (1), "authorized member of the Australian Federal Police" means a member of the Australian Federal Police appointed by the Commissioner of Police, by writing, to be an authorized member of the Australian Federal Police for the purposes of this section.

Amended by No.
180, 1979, ss. 5
and 13

219E. Where, before a warrant under this Division ceases to be in force, the Commissioner of Police is satisfied that the grounds on which the warrant was issued have ceased to exist, he shall—

- (a) forthwith take such steps as are necessary to ensure that action in pursuance of the warrant (other than the recovery of a listening device or a part of a listening device) is discontinued; and
- (b) by instrument under his hand, revoke the warrant.

Discon-
tinuance of
action before
expiration of
warrant
Inserted by No.
92, 1979, s. 8;
amended by
1979, No. 180,
s. 13

219F. (1) A person shall not divulge or communicate to another person, or make use of or record, any information obtained by using a listening device for the purposes of narcotics inquiries that are being, or have been, made by members of the Australian Federal Police, being information that has come to his knowledge or into his possession by reason of his being, or having been, a member of the Australian Federal Police or by reason of his having entered into an arrangement with a member of the

Certain
information
not to be
disclosed
Inserted by No.
92, 1979, s. 8
Sub-section (1)
amended by No.
180, 1979, s. 13

s. 219F

Australian Federal Police to use a listening device for the purpose of those inquiries, except for the purposes of those inquiries.

Penalty: \$1,000 or imprisonment for 2 years.

Amended by No.
116, 1979, s. 4;
No. 180, 1979,
ss. 6 and 13

(2) Notwithstanding sub-section (1), the Commissioner of Police may, in accordance with the following paragraphs, by himself or by a member of the Australian Federal Police authorized by him, communicate information obtained by using a listening device for the purpose of narcotics inquiries that are being, or have been, made by members of the Australian Federal Police—

- (a) where the information relates, or appears to relate, to the commission, or intended commission, of an offence against the law of the Commonwealth or of a State or Territory, being an offence punishable by imprisonment for life or for a period, or maximum period, of not less than 3 years—the information may be communicated to a member of the Australian Federal Police for the purposes of investigations into the offence, or to an officer of the Police Force of a State or Territory;
- (b) where the information relates, or appears to relate, to activities that constitute, or to intended activities that would constitute, activities prejudicial to security, within the meaning of the *Australian Security Intelligence Organization Act 1979*—the information may be communicated to the person holding, or performing the duties of, the office of Director-General of Security under that Act.

Amended by No.
180, 1979, s. 13

(3) Without limiting the purposes for which a person may, in accordance with sub-section (1), divulge information, a person may divulge or communicate information obtained by using a listening device for the purpose of narcotics inquiries that are being, or have been, made by members of the Australian Federal Police in evidence in a proceeding—

- (a) by way of a prosecution for a narcotics offence or for any other offence against the law of the Commonwealth or of a State or Territory punishable by imprisonment for life or for a period or maximum period of not less than 3 years;
- (b) by way of an application for an order under sub-section 243B (1); or
- (c) for the condemnation or recovery of a ship or aircraft, or of goods, seized under section 203 in connection with the commission of a narcotics offence.

(4) Where a person is prosecuted before a Court for an offence of a kind referred to in paragraph (a) of sub-section (3), the Court may, in its discretion, refuse to permit information referred to in that sub-section to be given in evidence in the proceedings if it is satisfied that it would be unfair to the accused to admit the information in evidence.

s. 219G

219G. Where, by virtue of a warrant under this Division, any record or copy has been made and the Commissioner of Police is satisfied—

Certain records to be destroyed
Inserted by No. 92, 1979, s. 8; amended by No. 180, 1979, s. 13

- (a) that the record or copy will not assist, and is not likely to assist, members of the Australian Federal Police in, or in connection with narcotics inquiries that are being, or have been, made by them; and
- (b) that the record or copy is not required, and is not likely to be required—
 - (i) in, or in connection with, proceedings with respect to any narcotics offence or of a kind referred to in paragraph (b) or (c) of sub-section (3) of section 219F; or
 - (ii) in, or in connection with, the exercise by members of the Australian Federal Police of the powers conferred on the Commissioner of Police by sub-section (2) of section 219F,

the Commissioner of Police shall cause the record or copy to be destroyed.

219H. The Commissioner of Police shall cause to be retained in the records of the Australian Federal Police all warrants issued under section 219B, all documents furnished to a Judge in connection with the issue of those warrants, and all instruments issued under section 219E revoking warrants so issued.

Warrants, &c., to be retained
Inserted by No. 92, 1979, s. 8; amended by No. 180, 1979, ss. 7 and 13

* * * * *

Section 219J repealed by No. 180, 1979, s. 8

219K. (1) The Commissioner of Police shall furnish to the Minister a copy of each warrant issued under section 219B, a copy of all documents furnished to a Judge in connection with the issue of the warrant and each instrument issued under section 219E revoking the warrant as soon as practicable after the issue or revocation of a warrant.

Reports to be made to Minister concerning use of listening devices
Inserted by No. 92, 1979, s. 8
Sub-section (1) amended by No. 180, 1979, s. 13

(2) The Commissioner of Police shall furnish to the Minister, in respect of each warrant issued under section 219B, a report in writing with respect to the use made by members of the Australian Federal Police of information obtained by using a listening device in pursuance of the warrant and the communication of any information so obtained to persons other than members of the Australian Federal Police.

Amended by No. 180, 1979, ss. 9 and 13

s. 220

Division 2—Protection to Officers

Reasonable cause for seizure a bar to action

Amended by No. 12, 1923, s. 2

220. No person shall be liable for any seizure under this Act for which there shall have been reasonable cause, and when any claimant recovers any ship aircraft or goods seized or any proceeds thereof and at the same time reasonable cause for the seizure is found such finding shall bar all proceedings against all persons concerned in the seizing.

Notice of action to be given

Amended by No. 216, 1973, s. 3; No. 19, 1979, s. 123

221. No proceeding shall be commenced against any officer for anything done in execution of or by reason of his office until one month next after notice in writing shall have been delivered to him or left at his usual place of abode by the plaintiff his attorney or agent in which notice shall be clearly stated the cause and nature of the proceeding and the court in which the same is intended to be instituted, the name and place of abode of the plaintiff and the name and place of business of such attorney or agent unless the Supreme Court of a State, the Supreme Court of the Australian Capital Territory or the Supreme Court of the Northern Territory of Australia has granted leave to the plaintiff to proceed without notice, which leave the Court may grant on such terms as it thinks just.

Defect in notice not to invalidate

222. No notice under the last preceding section shall be deemed invalid by reason of any defect or inaccuracy therein unless the Court is of opinion that the defect or inaccuracy would prejudice the defendant in his defence and the Court may give leave to amend such notice as it thinks just.

No evidence to be produced but that contained in notice

223. Upon any proceeding instituted in pursuance of such notice the plaintiff shall not be at liberty to advance any evidence of any cause of action except such as has been distinctly stated in such notice nor shall the plaintiff be entitled to a verdict without proving on the trial that such notice has been duly served.

Officer may tender amends

224. It shall be lawful for any officer to whom notice of proceeding shall have been given at any time within one month after such notice to tender amends to the plaintiff his attorney or agent and in case such amends be not accepted to plead such tender in defence either alone or with other defences and if the amends tendered shall be found to have been sufficient no costs shall be recovered against an officer and he shall be entitled to costs if he shall have brought the amount into court when entering his defence.

Commencement of proceedings against officers

Amended by No. 64, 1981, s. 37

225. Every proceeding against any officer shall except as mentioned in the next section be commenced within 6 months after its cause shall have arisen and not afterwards and the venue shall be local and the defendant may plead the general issue and give any special matter in evidence.

s. 226

226. (1) No proceeding whether against an officer or otherwise for anything done for the protection of the revenue in relation to any Customs Tariff or Customs Tariff alteration proposed in the Parliament shall except as mentioned in the next section be commenced before the close of the session in which such Tariff or Tariff alteration is proposed or before the expiration of 12 months after such Tariff or Tariff alteration is proposed, whichever first happens.

Time for commencing action

Sub-section (1) amended by No. 7, 1934, s. 17; No. 48, 1963, s. 23; No. 64, 1981, s. 28

(2) No proceeding, whether against an officer or otherwise, for anything done for the protection of the revenue in relation to a Customs Tariff or Customs Tariff alteration that is intended to be proposed in accordance with a notice under section 273EA shall, except as provided in the next succeeding section, be commenced before—

Added by No. 42, 1960, s. 3; amended by No. 28, 1974, s. 7; No. 64, 1981, ss. 28 and 37

- (a) the seventh sitting day of the House of Representatives after the date of publication of the notice, or the day on which the period of 6 months from the date of publication of the notice expires, whichever is the earlier day; or
- (b) where, on or before the earlier of the days referred to in the last preceding paragraph, a Customs Tariff or Customs Tariff alteration that would validate the thing so done is proposed in the Parliament—the close of the session in which the Customs Tariff or Customs Tariff alteration is so proposed, or the expiration of 12 months after the Customs Tariff or Customs Tariff alteration is so proposed, whichever first happens.

227. The Supreme Court of a State, the Supreme Court of the Australian Capital Territory or the Supreme Court of the Northern Territory of Australia on the application of any person who desires to commence any proceeding mentioned in the last section against an officer may require the officer to give security to the satisfaction of the Court to abide the result of the proceeding and in default of the giving of such security may sanction the immediate commencement of the proceeding.

Security may be required

Amended by No. 216, 1973, s. 3; No. 19, 1979, s. 123

PART XIII—PENAL PROVISIONS

Division 1—Forfeitures

228. The following ships or boats not exceeding 250 tons registered tonnage and the following aircraft shall be forfeited to the Crown:

Forfeited ships and aircraft

- (1) Any ship or aircraft used in smuggling, or knowingly used in the unlawful importation, exportation, or conveyance of any prohibited imports or prohibited exports.
- (2) Any ship failing to be brought to for boarding upon its master being properly requested under section 59 to bring it to.

Substituted by No. 12, 1923, s. 32; amended by No. 7, 1934, s. 18; No. 56, 1950, s. 9; No. 108, 1952, s. 20; No. 28, 1966, s. 4; No. 54, 1967, s. 10; No. 216, 1973, s. 3; No. 64, 1981, ss. 29 and 37

s. 228

- (3) Any aircraft failing to land at an airport for boarding upon its pilot being properly requested under section 59 to land the aircraft.
- (4) Any ship or aircraft from which goods are thrown overboard staved or destroyed to prevent seizure by the Customs.
- (5) Any ship or aircraft found within any port or airport with cargo on board and afterwards found light or in ballast or with the cargo deficient and the master or pilot of which is unable to lawfully account for the difference.
- (6) Any ship or aircraft which on being boarded in pursuance of section 59, 185 or 187 is found to be constructed, adapted, altered or fitted in any manner for the purpose of concealing goods.

The owner of a ship exceeding 250 tons registered tonnage which would be forfeited if the ship were less than 250 tons registered tonnage shall be liable to a penalty not exceeding \$10,000, and the ship may be detained until the penalty is paid or until security is given for its payment.

Forfeited goods

Sub-section (1) amended by
No. 21, 1906, s. 5;
No. 12, 1923, s. 2;
No. 7, 1934, s. 19;
No. 56, 1950, s. 9;
No. 108, 1952, ss. 16 and 20;
No. 104, 1968, s. 35; No. 216, 1973, s. 3; No. 64, 1981, s. 30.

229. (1) The following goods shall be forfeited to the Crown:

- (a) All goods which are smuggled, or unlawfully imported, exported, or conveyed.
- (b) All prohibited imports.
- (ba) All goods the importation of which has been prohibited unless a licence or permission containing conditions or requirements has been granted and those conditions or requirements have not been complied with.
- (bb) Any goods sold under section 207 or sold or otherwise disposed of under section 208D subject to a condition that has not been complied with.
- (c) All goods imported or exported in any ship boat or aircraft in which goods are prohibited to be imported or exported.
- (d) All dutiable goods found on any ship boat or aircraft being unlawfully in any place.
- (e) All goods found on any ship or aircraft after arrival in any port or airport and not being specified or referred to in the Inward Manifest and not being baggage belonging to the crew or passengers and not being satisfactorily accounted for.
- (f) All goods in respect of which bulk is unlawfully broken.
- (g) All goods subject to the control of the Customs that are moved, altered or interfered with except as authorized by this Act.
- (h) All goods which by this Act are required to be moved or dealt with in any way and which shall not be moved or dealt with accordingly.

s. 229

- (i) All goods in respect of which any entry invoice declaration answer statement or representation which is false or wilfully misleading in any particular has been delivered made or produced.
- (j) Any carriage or animal used in smuggling or in the unlawful importation, exportation, or conveyance of any goods.

* * * * *

- (m) All goods not being passengers' baggage found on any ship or aircraft after clearance and not specified or referred to in the Outward Manifest and not accounted for to the satisfaction of the Collector.
- (n) All prohibited exports put on any ship boat or aircraft for export or brought to any wharf or place for the purpose of export.
- (o) All dutiable goods concealed in any manner.
- (p) Any package having concealed therein goods not enumerated in the entry or being so packed as to deceive the officer.
- (q) All dutiable goods found in the possession or in the baggage of any person who has got out of, landed from or gone on board any ship boat or aircraft and who has denied that he has any dutiable goods in his possession, or who when questioned by an officer has not fully disclosed that such goods are in his possession or baggage.
- (r) All goods offered for sale on the pretence that the same are prohibited or smuggled goods.

(2) Notwithstanding section 228, this section applies in relation to ships, boats and aircraft as well as other goods.

Added by
No. 110, 1980,
s. 23

229A. (1) In this section, unless the contrary intention appears—
“cheque” includes a bill, promissory note or other security for money;
“goods” includes cheques, but does not include moneys in the form of cash;

Proceeds of
drug
trafficking
liable to
forfeiture
Inserted by
No. 154, 1977,
s. 8

“moneys” means moneys in the form of cash.

(2) This section applies to—

Amended by
No. 92, 1979, s. 9

- (a) moneys or goods in the possession or under the control of a person, being moneys or goods that came into his possession or under his control by reason of—
 - (i) his selling or otherwise dealing in, or his agreeing to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act;
 - (ii) his importing, or his agreeing to import, narcotic goods into Australia in contravention of this Act;
 - (iii) his exporting, or his agreeing to export, narcotic goods from Australia in contravention of this Act;

s. 229A

- (iv) his keeping or having kept, or his agreeing to keep, in his possession narcotic goods imported into Australia in contravention of this Act;
 - (v) his conspiring with another person or other persons to import any narcotic goods into Australia in contravention of this Act or to export any narcotic goods from Australia in contravention of this Act; or
 - (vi) his aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the sale of, or other dealing in, narcotic goods imported into Australia in contravention of this Act, the importation of narcotic goods into Australia in contravention of this Act, the exportation of narcotic goods from Australia in contravention of this Act or the keeping in the possession of any person of narcotic goods imported into Australia in contravention of this Act;
- (b) moneys in the possession or under the control of a person that were paid to him for the sale of goods that were, immediately before the sale, goods to which this section applied; and
- (c) goods in the possession or under the control of a person that were purchased or otherwise acquired by him with or out of moneys to which this section applied.
- (3) Where a person who obtained possession or control of a cheque, or was paid moneys by a cheque, in any of the circumstances set out in paragraph (2) (a) or (b) receives, in respect of the cheque, moneys in the form of cash, the moneys so received shall, for the purposes of sub-section (2), be deemed to be moneys that came into his possession or under his control, or were paid to him, in the circumstances in which he obtained possession or control of the cheque, or was paid the moneys by the cheque.
- (4) Where a person who purchases or otherwise acquires goods pays the whole or substantially the whole of the amount paid by him for the goods by means of a cheque that came into his possession or under his control as set out in paragraph (2) (a), the goods shall, for the purposes of sub-section (2), be deemed to have come into his possession or under his control in the circumstances in which the cheque came into his possession or under his control.
- (5) For the purposes of paragraph (2) (c), goods shall not be taken to have been purchased with or out of moneys to which this section applied unless the whole, or substantially the whole, of the moneys paid for the goods were moneys to which this section applied.
- (6) For the purposes of section 203, moneys or goods to which this section applies shall be deemed to be forfeited goods and, upon moneys or goods to which this section applies being seized in pursuance of section 203, they shall, for the purposes of sections 204 to 208E (inclusive) and

Part XIV, be deemed to be forfeited goods, and those provisions apply accordingly.

(7) Where, in any proceedings for the condemnation or recovery of moneys or goods to which this section applies and which have been seized under section 203, the Court is satisfied that the relevant narcotic goods are goods reasonably suspected of having been imported into Australia in contravention of this Act, the Court shall, for the purposes of the proceedings, treat the narcotic goods as narcotic goods which have been imported into Australia in contravention of this Act unless it is established to the satisfaction of the Court that the narcotic goods were not imported into Australia or were not imported into Australia in contravention of this Act.

(8) Without limiting any powers that are conferred on a Court by the provisions of this Act specified in sub-section (6) and notwithstanding any other provision of this Act—

- (a) where moneys or goods in the possession or under the control of a person are seized under section 203, a Court in which proceedings are brought for the condemnation or recovery of the moneys or goods shall, if it is satisfied that the moneys or goods were, at the time when they were so seized, owned by another person who, when he became the owner of the moneys or goods, did not know, and had no reason to suspect, that the moneys or goods had come into the possession or under the control of the first-mentioned person in circumstances referred to in sub-section (2), direct that the moneys or goods be delivered to that other person; and
- (b) where moneys or goods in the possession or under the control of the licensee of a warehouse are seized under section 203, a Court in which proceedings are brought for the condemnation or recovery of the moneys or goods shall direct that the moneys or goods be delivered to the licensee if it is satisfied that—
 - (i) the moneys came into the possession or under the control of the licensee by reason of his storing in the warehouse narcotic goods imported into Australia in contravention of this Act or by reason of his selling goods that were acquired by him with or out of any such moneys; or
 - (ii) the goods were purchased or otherwise acquired by him out of moneys that so came into his possession or under his control,

as the case may be, and is also satisfied that the licensee did not know that the goods stored in the warehouse were narcotic goods or that they had been imported into Australia in contravention of this Act.

s. 230

Forfeited
packages and
goods

Amended by
No. 92, 1979,
s. 10

230. The forfeiture of any goods shall extend to the forfeiture of the packages in which the goods are contained and the forfeiture of any package under section 229 shall extend to all goods packed or contained in the package.

Division 2—Penalties

Assembly for
unlawful
purposes

Substituted by
No. 7, 1934, s. 20

Sub-section (1)
amended by
No. 54, 1967, s. 5;
No. 134, 1971,
s. 4; No. 28, 1974,
s. 7; No. 64, 1981,
s. 37

231. (1) All persons to the number of 2 or more assembled for the purpose of—

- (a) importing prohibited imports; or
- (b) smuggling; or
- (c) preventing the seizure, or rescuing after seizure, of any prohibited imports or smuggled goods,

shall be guilty of an offence punishable upon conviction—

- (d) if the offence is committed in relation to goods that are not narcotic goods—by imprisonment for a period not exceeding 2 years; or
- (e) if the offence is committed in relation to goods that are narcotic goods—as provided by section 235.

Amended by
No. 54, 1967, s. 5;
No. 134, 1971,
s. 4

(2) This section, in so far as it relates to prohibited imports, shall apply to all prohibited imports that are narcotic goods.

Added by No. 54,
1967, s. 5;
amended by
No. 28, 1974, s. 7

(3) An offence against this section to which paragraph (d) of sub-section (1) applies is punishable upon summary conviction.

Collusive
seizures—
penalty

Amended by
No. 7, 1934, s. 21;
No. 64, 1981,
s. 37

232. Whoever—

- (a) being an officer of the Customs or Police makes any collusive seizure or delivers up or makes any agreement to deliver up or not to seize any ship boat carriage or goods liable to forfeiture or conspires or connives with any person to import or export, or is in any way concerned in the importation or exportation of any goods for the purpose of seizing any ship boat carriage or goods and obtaining any reward for such seizure;
- (b) gives, or procures to be given, or offers or promises to give or procure to be given any bribe recompense or reward to, or makes any collusive agreement with any officer to induce him in any way to neglect his duty, or who by threats demands or promises attempts to influence any officer in the discharge of his duty,

Bribe offered
to officer—
penalty

s. 232

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.

232A. Whoever—

- (a) rescues any goods which have been seized, or, before or at or after seizure, staves, breaks or destroys any goods or documents relating thereto to prevent the seizure thereof or the securing of the same or the proof of any offence; or
- (b) assaults, resists, molests, obstructs or endeavours to intimidate any officer, or any person assisting an officer, in the execution of his duty,

Rescuing goods and assaulting officers

Inserted by No. 7, 1934, s. 22; amended by No. 54, 1959, s. 27; No. 48, 1963, s. 24; No. 28, 1966, s. 4; No. 54, 1967, s. 10; No. 64, 1981, s. 37

shall be guilty of an offence and shall be liable, upon summary conviction, to a fine not exceeding \$500 or to imprisonment for any period not exceeding 2 years.

233. (1) No person shall—

- (a) smuggle any goods; or
- (b) import any prohibited imports; or
- (c) export any prohibited exports; or
- (d) unlawfully convey or have in his possession any smuggled goods or prohibited imports or prohibited exports.

Smuggling and unlawful importation and exportation

Substituted by No. 36, 1910, s. 11
Sub-section (1) amended by No. 48, 1963, s. 25; No. 28, 1966, s. 4; No. 54, 1967, s. 6; No. 134, 1971, s. 5; No. 64, 1981, s. 37

Penalty: \$1,000.

* * * * *

Sub-section (1A) omitted by No. 134, 1971, s. 5

(2) It shall not be lawful for any person to convey or have in his possession without reasonable excuse (proof whereof shall lie upon him) any smuggled goods or prohibited imports.

(3) It shall not be lawful for any person to convey or have in his possession any prohibited exports with intent to export them or knowing that they are intended to be unlawfully exported.

(4) Merchandise on board a ship or aircraft calling at any port or airport in Australia, but intended for and consigned to some port or airport or place outside Australia, shall not be deemed to be unlawfully imported into Australia if the goods are specified on the ship's or aircraft's manifest and are not transhipped or landed in Australia or are transhipped or landed by authority.

Amended by No. 12, 1923, s. 2; No. 108, 1952, s. 20

(5) This section does not apply to, or in relation to, narcotic goods.

Added by No. 134, 1971, s. 5

s. 233A

Master not to use or allow use of ship for smuggling, &c.

Sub-section (1) substituted by No. 36, 1910, s. 11; amended by No. 12, 1923, s. 2; No. 28, 1966, s. 4; No. 54, 1967, s. 7; No. 64, 1981, s. 37

Added by No. 54, 1967, s. 7; amended by No. 134, 1971, s. 6; No. 28, 1974, s. 7; No. 64, 1981, s. 37

Special provisions with respect to narcotic goods

Substituted by No. 36, 1910, s. 11

Sub-section (1) amended by No. 12, 1923, s. 2; No. 54, 1967, s. 8; No. 134, 1971, s. 7; No. 92, 1979, s. 11

233A. (1) The master of a ship or the pilot of an aircraft shall not use his ship or aircraft, or knowingly suffer her to be used, in smuggling, or in the importation of any goods in contravention of this Act, or in the exportation or conveyance of any goods in contravention of this Act.

(2) A person who contravenes the last preceding sub-section is guilty of an offence punishable upon conviction—

- (a) if the offence is committed in relation to goods that are not narcotic goods—by a fine not exceeding \$1,000; or
- (b) if the offence is committed in relation to goods that are narcotic goods—as provided by section 235.

233B. (1) Any person who—

- (a) without any reasonable excuse (proof whereof shall lie upon him) has in his possession, on board any ship or aircraft, any prohibited imports to which this section applies; or
- (b) imports, or attempts to import, into Australia any prohibited imports to which this section applies or exports, or attempts to export, from Australia any prohibited exports to which this section applies; or
- (c) without reasonable excuse (proof whereof shall lie upon him) has in his possession, or attempts to obtain possession of, any prohibited imports to which this section applies which have been imported into Australia in contravention of this Act; or
- (ca) without reasonable excuse (proof whereof shall lie upon him) has in his possession, or attempts to obtain possession of, any prohibited imports to which this section applies which are reasonably suspected of having been imported into Australia in contravention of this Act; or
- (cb) conspires with another person or other persons to import into Australia any prohibited imports to which this section applies or to export from Australia any prohibited exports to which this section applies; or
- (d) aids, abets, counsels, or procures, or is in any way knowingly concerned in, the importation into Australia of any prohibited imports to which this section applies, or the exportation from Australia of any prohibited exports to which this section applies; or

s. 233B

(e) fails to disclose to an officer on demand any knowledge in his possession or power concerning the importation or intended importation into Australia of any prohibited imports to which this section applies or the exportation or intended exportation from Australia of any prohibited exports to which this section applies; shall be guilty of an offence.

(1A) On the prosecution of a person for an offence against the last preceding sub-section, being an offence to which paragraph (c) of that sub-section applies, it is not necessary for the prosecution to prove that the person knew that the goods in his possession or of which he attempted to obtain possession had been imported into Australia in contravention of this Act, but it is a defence if the person proves that he did not know that the goods in his possession or of which he attempted to obtain possession had been imported into Australia in contravention of this Act.

Inserted by
No. 54, 1967, s. 8;
amended by
No. 92, 1979,
s. 11.

(1B) On the prosecution of a person for an offence against sub-section (1), being an offence to which paragraph (ca) of that sub-section applies, it is a defence if the person proves that the goods were not imported into Australia or were not imported into Australia in contravention of this Act.

Inserted by
No. 134, 1971,
s. 7; amended by
No. 28, 1974, s. 7

(1C) Any defence for which provision is made under either of the last 2 preceding sub-sections in relation to an offence does not limit any defence otherwise available to the person charged.

Inserted by
No. 134, 1971,
s. 7; amended by
No. 64, 1981,
s. 37

(2) The prohibited imports to which this section applies are prohibited imports that are narcotic goods and the prohibited exports to which this section applies are prohibited exports that are narcotic goods.

Substituted by
No. 134, 1971,
s. 7.

(3) A person who is guilty of an offence against sub-section (1) of this section is punishable upon conviction as provided by section 235.

Substituted by
No. 54, 1967, s. 8;
amended by
No. 28, 1974, s. 7

(4) This section shall not prevent any person from being proceeded against for an offence against any other section of this Act, but he shall not be liable to be punished twice in respect of any one offence.

234. No person shall—

- (a) Evade payment of any duty which is payable;
- (b) Obtain any drawback, refund, rebate or remission which is not payable;

* * * * *

- (d) Make any entry which is false in any particular;
- (e) Make in any declaration or document produced, delivered or furnished to any officer any statement which is untrue in any particular or produce, deliver or furnish to any officer any declaration or document containing any such statement;

Customs
offences
Amended by
No. 12, 1923,
s. 33; No. 28,
1966, s. 4; No. 54,
1967, s. 10;
No. 154, 1977,
s. 9; No. 64, 1981,
ss. 32 and 37

s. 234

- (f) Mislead any officer in any particular likely to affect the discharge of his duty;
- (g) Refuse or fail to answer questions or to produce documents;
- (h) Sell or offer for sale any goods upon the pretence that such goods are prohibited imports or smuggled goods.

Penalty: \$1,000.

Places set aside for purposes of Act

Inserted by No. 110, 1980, s. 25

234AA. Where a place is to be used by officers—

- (a) for questioning, for the purposes of this Act or of any other law of the Commonwealth, passengers disembarking from or embarking on a ship or aircraft;
- (b) for examining, for such purposes, the personal baggage of such passengers; or
- (c) as a holding place for such passengers,

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 entry into it by unauthorized persons is prohibited by this Act.

Unauthorized entry to places and on ships, aircraft or wharves

Inserted by No. 108, 1952, s. 17

Sub-section (1) amended by No. 28, 1966, s. 4; No. 54, 1967, s. 10; No. 110, 1980, s. 26; No. 64, 1981, s. 37

234A. (1) A person, other than a passenger disembarking from, or embarking on, a ship or aircraft, shall not, except by authority—

- (a) enter into, or be in, a place in relation to which a sign is displayed under section 23AA; or
- (b) enter on or be in or on—
 - (i) a ship;
 - (ii) an aircraft; or
 - (iii) the wharf at which, or the part of a wharf adjacent to which, a ship is berthed,

at a time when goods being the personal baggage of passengers disembarking from, or embarking on that ship or aircraft are being examined, for the purposes of this Act, at or in the vicinity of the ship, aircraft, wharf or part of a wharf.

Penalty: \$100.

Added by No. 37, 1957, s. 10

(2) The last preceding sub-section does not prohibit a person—

- (a) who has, or is a member of an authority which has, the management or control of a wharf or wharves or an airport or airports; or
- (b) who is employed in connexion with the management or control of a wharf or wharves or an airport or airports,

from entering on, or being in or on, a place, ship, aircraft, wharf or part of a wharf for the purposes of that management or control.

Added by No. 110, 1980, s. 26

(3) In any proceedings for the prosecution of a person for an offence against sub-section (1), evidence that a sign stating that entry into 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 section 234AA.

235. (1) Where—

- (a) a person commits an offence against sub-section (4) of section 50 or sub-section (2B) of section 112; and
- (b) the offence is an offence that is punishable as provided by this section,

Penalties for offences in relation to narcotic goods.

Substituted by No. 154, 1977, s. 10

the penalty applicable to the offence is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 2 years, or both.

(2) Subject to sub-sections (3) and (7), where—

- (a) a person commits an offence against sub-section (1) of section 231, section 233A or sub-section (1) of section 233B; and
- (b) the offence is an offence that is punishable as provided by this section,

Amended by No. 92, 1979, s. 12

the penalty applicable to the offence is—

(c) where the Court is satisfied—

- (i) that the narcotic goods in relation to which the offence was committed consist of a quantity of a prescribed narcotic substance that is not less than the commercial quantity applicable to that substance; or
- (ii) that the narcotic goods in relation to which the offence was committed consist of a quantity of a narcotic substance that is not less than the traffickable quantity applicable to that substance and also that, on a previous occasion, a court has—

(A) convicted the person of another offence, being an offence against a provision referred to in paragraph (a) that involved other narcotic goods which consisted of a quantity of a narcotic substance not less than the traffickable quantity that was applicable to that substance when the offence was committed; or

(B) found, without recording a conviction, that the person had committed another such offence—

imprisonment for life or for such period as the Court thinks appropriate;

- (d) where the Court is satisfied that the narcotic goods in relation to which the offence was committed consist of a quantity of a narcotic substance that is not less than the traffickable quantity applicable to the substance but is not satisfied as provided in paragraph (c)—

s. 235

- (i) if the narcotic substance is a narcotic substance other than cannabis—a fine not exceeding \$100,000 or imprisonment for a period not exceeding 25 years, or both; or
- (ii) if the narcotic substance is cannabis—a fine not exceeding \$4,000 or imprisonment for a period not exceeding 10 years, or both; or
- (e) in any other case—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 2 years, or both.

(3) Where—

- (a) the Court is satisfied that the narcotic goods in relation to which an offence referred to in sub-section (2) was committed consist of a quantity of a narcotic substance that is not less than the traffickable quantity applicable to that substance, but is not satisfied as provided in paragraph (c) of that sub-section in relation to those narcotic goods; and
- (b) the Court is also satisfied that the offence was not committed by the person charged for any purposes related to the sale of, or other commercial dealing in, those narcotic goods,

notwithstanding paragraph (d) of that sub-section, the penalty punishable for the offence is the penalty specified in paragraph (e) of that sub-section.

(4) An offence referred to in sub-section (1) or (2) may be prosecuted summarily or upon indictment or, where the law of the State or Territory in which the proceedings are brought makes provision for an offender who pleads guilty to a charge to be dealt with by the Court otherwise than on indictment, the Court may deal with an offender in accordance with that law.

(5) Nothing in sub-section (4) renders an offender liable to be punished more than once for the same offence.

(6) Where proceedings for an offence referred to in sub-section (1) or (2) are brought in a court of summary jurisdiction, the court may commit the defendant for trial or to be otherwise dealt with in accordance with law or, if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent to it doing so, may determine the proceedings summarily.

(7) Where a court of summary jurisdiction determines proceedings summarily in accordance with sub-section (6), it shall not impose a fine exceeding \$2,000 or sentence the defendant to imprisonment for a period exceeding 2 years, but may impose both a fine and a period of imprisonment in respect of the offence.

(8) For the purposes of sub-sections (2) and (3), the narcotic substance of which narcotic goods in relation to which an offence has been

s. 235

committed consist is the narcotic substance that is specified in the relevant information, complaint, declaration, claim or indictment as the narcotic substance of which those goods consist.

236. Whoever aids abets counsels or procures or by act or omission is in any way directly or indirectly concerned in the commission of any offence against this Act shall be deemed to have committed such offence and shall be punishable accordingly.

Aiders and abettors

237. Any attempt to commit an offence against this Act shall be an offence against this Act punishable as if the offence had been committed.

Attempts

238. Any person who is guilty by act or omission of any contravention or evasion of this Act for which no other penalty is provided shall be liable to a penalty of not more than \$50.

Offences not specifically provided for
Amended by No. 28, 1966, s. 4; No. 54, 1967, s. 10; No. 64, 1981, s. 37

239. All penalties shall be in addition to any forfeiture.

Penalties in addition to forfeitures

240. If any penalty hereby provided shall be less than 3 times the value of any goods in respect of which the offence has been committed the maximum penalty shall be thrice the value of the goods.

Maximum penalty in certain cases
Amended by No. 64, 1981, s. 37

241. Any person may at the same time be charged with an offence against this Act and with an intent to defraud the revenue and if in addition to such offence he is convicted of such intent the maximum penalty shall be double that otherwise provided.

Maximum penalty in case of intent to defraud

242. When any person is convicted of any offence against this Act for which a pecuniary penalty is provided and it shall appear that such person had been previously convicted of any similar offence the Court may in lieu of or in addition to imposing any penalty order that such person shall be imprisoned with hard labour for a period not less than 6 months nor more than 2 years and with or without the right of release on payment of a penalty.

If previous conviction defendant may be imprisoned
Amended by No. 64, 1981, s. 37

243. The minimum pecuniary penalty for any offence against this Act shall be one-twentieth of the maximum pecuniary penalty specified in this Act, other than in section 240, in respect of that offence.

Minimum penalty
Amended by No. 133, 1965, s. 7; No. 28, 1974, s. 7

s. 243A

Division 3—Recovery of Pecuniary Penalties for Dealings in Narcotic Goods

Division 3
inserted by
No. 92, 1979,
s. 13

Interpret-
ation

Inserted by
No. 92, 1979,
s. 13

Sub-section (1)
amended by
No. 13, 1980,
s. 6; No. 64,
1981, s. 33

- 243A.** (1) In this Division, unless the contrary intention appears—
- “cheque” includes a bill, promissory note or other security for money;
 - “Court” means the Federal Court of Australia;
 - “Minister” means the Minister of State for Administrative Services;
 - “moneys” means moneys in the form of cash;
 - “Official Trustee” means the Official Trustee in Bankruptcy;
 - “pecuniary penalty” means a pecuniary penalty referred to in section 243B;
 - “petition” means a petition under the *Bankruptcy Act* 1966;
 - “property” means real or personal property of every description, whether situated in Australia or elsewhere, and includes any estate, interest or profit, whether present or future, vested or contingent, arising out of or incident to any such real or personal property.

(2) Where a person who has obtained possession or control of a cheque, or was paid moneys by a cheque, in any of the circumstances set out in sub-section (3), receives, in respect of the cheque, moneys in the form of cash, the moneys so received shall, for the purposes of this Division, be deemed to be moneys that came into his possession or under his control, or were paid to him, in the circumstances in which he obtained possession or control of the cheque, or was paid the moneys by the cheque.

(3) For the purposes of this Division, a person shall be taken to engage in a prescribed narcotics dealing if—

- (a) he sells or otherwise deals in, or agrees to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act;
- (b) he imports, or agrees to import, narcotic goods into Australia in contravention of this Act;
- (c) he exports, or agrees to export, narcotic goods from Australia in contravention of this Act;
- (d) he keeps, or agrees to keep, in his possession narcotic goods imported into Australia in contravention of this Act;
- (e) he conspires with another person or other persons to import any narcotic goods into Australia, or to export any narcotic goods from Australia, in contravention of this Act; or
- (f) he aids, abets, counsels or procures, or is in any way knowingly concerned in, the sale of, or other dealing in, narcotic goods imported into Australia in contravention of this Act, the importation of narcotic goods into Australia, or the exportation of narcotic goods from Australia, in contravention of this Act, or the

keeping in the possession of any person of narcotic goods imported into Australia in contravention of this Act.

(4) A reference in this Division to the property of a person shall be read as a reference to the property in respect of which the person has a beneficial interest.

(5) Where, upon application being made to the Court under sub-section 243E (1) and supported by an affidavit made by a member of the Australian Federal Police or an officer of Customs stating that he believes that any property is the property of a person, the Court makes an order under that section directing the Official Trustee to take control of that property, for the purposes of this Division, the property shall, while that order applies to the property, be deemed to be the property of that person.

Amended by
No. 180, 1979,
s. 10; No. 13,
1980, s. 6

(6) A reference in this Division to a proceeding for the recovery of a pecuniary penalty shall be read as a reference to a proceeding instituted under section 243B for an order under sub-section (1) of that section.

(7) Where, by reason of a person's having been engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, benefits have been derived by another person at the request, or by the direction, of the first-mentioned person, those benefits shall, for the purposes of this Division, be deemed to have been derived by that first-mentioned person by reason of his having been engaged in that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be.

243B. (1) Subject to sub-section (7), the Minister, the Commissioner of Police or the Comptroller may institute a proceeding in the Court, on behalf of the Commonwealth, for an order that a person pay a pecuniary penalty to the Commonwealth in respect of—

Pecuniary
penalties
Inserted by
No. 92, 1979,
s. 13

- (a) a particular prescribed narcotics dealing engaged in by him; or
- (b) prescribed narcotics dealings engaged in by him during a particular period.

Sub-section (1)
amended by
No. 64, 1981,
s. 36

(2) If, in a proceeding instituted under sub-section (1), the Court is satisfied that the person in relation to whom the order is sought—

- (a) has engaged in a particular prescribed narcotics dealing; or
- (b) has, during a particular period, engaged in prescribed narcotics dealings,

the Court shall assess, in accordance with section 243C, the value of the benefits derived by the person by reason of his having engaged in that dealing, or in prescribed narcotics dealings during that period, as the case may be, and order the person to pay to the Commonwealth a pecuniary penalty equal to the value as so assessed.

s. 243B

(3) The Court may order a person to pay a pecuniary penalty under sub-section (2) in relation to a particular prescribed narcotics dealing, or prescribed narcotics dealings during a particular period, whether or not the person has been convicted of an offence, or proceedings have been instituted in respect of any offence, committed in relation to that dealing or any of those dealings and whether or not any moneys or other goods have been seized under section 229A in relation to that dealing or any of those dealings.

(4) An amount payable by a person to the Commonwealth in accordance with an order made under sub-section (2) shall, for all purposes, be deemed to be a civil debt due by the person to the Commonwealth.

(5) An order made by the Court under sub-section (2) may be enforced as if it were an order made by the Court in civil proceedings instituted by the Commonwealth against the person to recover a debt due by the person to the Commonwealth.

(6) This section applies to and in relation to moneys that come, or other property that comes, into the possession or under the control of a person either within or outside Australia, and to benefits that are provided for a person either within or outside Australia.

(7) A proceeding under sub-section (1) may be commenced—

- (a) if the proceeding relates to a particular prescribed narcotics dealing engaged in by a person after the commencement of this section—within 6 years after that dealing took place; or
- (b) if the proceeding relates to prescribed narcotics dealings during a particular period, being a period that commenced after the commencement of this section—within 6 years after the end of that period.

243C. (1) In this section, a reference to the defendant in relation to a proceeding under section 243B shall be read as a reference to a person against whom an order is sought in that proceeding.

(2) In a proceeding under section 243B, the value of the benefits derived by the defendant by reason of his having engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period shall be assessed by the Court having regard to the evidence before the Court concerning all or any of the following matters:

- (a) the moneys, or the value of the property other than moneys, that came into the possession or under the control of—
 - (i) the defendant; or
 - (ii) another person at the request or by the direction of the defendant,

by reason of the defendant's having engaged in that dealing or in prescribed narcotics dealings during that period;

- (b) the value of any benefit, other than a benefit of the kind referred to in paragraph (a) that was provided for—

- (i) the defendant; or

- (ii) another person at the request or by the direction of the defendant,

by reason of the defendant's having engaged in that dealing or in prescribed narcotics dealings during that period;

- (c) in the case of a prescribed narcotics dealing that consisted of selling or otherwise dealing in narcotic goods—the market value, at the time of the dealing, of similar or substantially similar narcotic goods;
- (d) in the case of a prescribed narcotics dealing that consisted of the doing of any act or thing other than selling or otherwise dealing in narcotic goods—the amount that was, or the range of amounts that were, at the time the dealing occurred, ordinarily paid for the doing of a similar or substantially similar act or thing; and
- (e) the value of the defendant's property before and after he engaged in that dealing, or before and after the end of that period, as the case may be.

(3) Where evidence is given in a proceeding under section 243B that the value of the defendant's property after he engaged in a particular prescribed narcotics dealing, or after the end of a particular period during which he engaged in prescribed narcotics dealings, exceeded the value of the defendant's property before he engaged in that dealing, or before the commencement of that period, then, for the purposes of sub-section (2) of that section, the Court shall, subject to sub-section (4), treat the value of benefits derived by the defendant by reason of his having engaged in that dealing or in prescribed narcotics dealings during that period as being not less than the amount of the excess.

(4) Where, after evidence has been given in a proceeding under section 243B that the value of the defendant's property after he engaged in a particular prescribed narcotics dealing, or after the end of a particular period, exceeded the value of the defendant's property before he engaged in that dealing, or before the commencement of that period, the defendant satisfies the Court that the whole or a part of the excess was due to certain causes, being causes unrelated to his having engaged in that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be—

- (a) if the defendant so satisfies the Court in respect of the whole of the excess—sub-section (3) does not apply to the excess; or
- (b) if the defendant so satisfies the Court in respect of a part of the excess—sub-section (3) applies to and in relation to the excess as if it were reduced by the amount of that part.

s. 243C

Amended by
No. 180, 1979,
s. 11

(5) In a proceeding under section 243B, a member of the Australian Federal Police or an officer of Customs who is experienced in the investigation of narcotics offences may testify—

- (a) with respect to the amount that, to the best of his information, knowledge and belief, was the market value of narcotic goods at a particular time or during a particular period; or
- (b) with respect to the amount, or the range of amounts, that, to the best of his information, knowledge and belief, was the amount, or range of amounts, ordinarily paid at a particular time or during a particular period for the doing of an act or thing (not being the selling or other dealing in narcotic goods) comprising a prescribed narcotics dealing,

notwithstanding any rule of law or practice relating to hearsay evidence, and his testimony is *prima facie* evidence of the matters testified to.

(6) In calculating, for the purposes of a proceeding under section 243B, the value of benefits derived by the defendant by reason of his having engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, any expenses or outgoings of the defendant in connection with that dealing, or those dealings, shall be disregarded.

Presumption
of illegality
of
importation

Inserted by
No. 92, 1979,
s. 13

243D. Where, in a proceeding under section 243B against a person, the Court is satisfied that the narcotic goods in relation to which the person is alleged to have engaged in a prescribed narcotics dealing or in prescribed narcotics dealings are goods reasonably suspected of having been imported into Australia in contravention of this Act, the Court shall, for the purposes of the proceeding, treat the narcotic goods as narcotic goods which have been imported into Australia in contravention of this Act unless it is established to the satisfaction of the Court that the narcotic goods were not imported into Australia or were not imported into Australia in contravention of this Act.

Court may
direct the
Official
Trustee to
take control
of property

Inserted by
No. 92, 1979,
s. 13

Sub-section (1)
amended by
No. 13, 1980, s. 6;
No. 64, 1981,
s. 36

243E. (1) Where the Minister, the Commissioner of Police or the Comptroller has instituted a proceeding under section 243B for an order that a person (in this section referred to as the "defendant") pay a pecuniary penalty in relation to a particular prescribed narcotics dealing, or in relation to prescribed narcotics dealings during a particular period, the Minister, the Commissioner of Police or the Comptroller may make application to the Court, *ex parte*, for an order directing the Official Trustee to take control of property specified in the application or of all the property of the defendant.

(2) Where—

(a) an application under sub-section (1) is supported by—

- (i) an affidavit of a member of the Australian Federal Police or an officer of Customs stating that he believes that—

Amended by
No. 180, 1979,
s. 12; No. 13,
1980, s. 6

s. 243E

(A) the defendant has engaged in the prescribed narcotics dealing to which the proceeding under section 243B relates, or in prescribed narcotics dealings during the period to which that proceeding relates; and

(B) benefits were derived by the defendant by reason of the defendant's having engaged in that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be,

and setting out the grounds on which he holds those beliefs; and

(ii) if the application seeks an order directing the Official Trustee to take control of specified property—an affidavit of a member of the Australian Federal Police or an officer of Customs stating that he believes that the property is the property of the defendant and setting out the grounds on which he holds that belief; and

(b) the Court considers that, having regard to the matters contained in that affidavit or those affidavits, there are reasonable grounds for holding those beliefs,

the Court—

(c) shall make an order directing the Official Trustee to take control—

(i) if the application seeks an order with respect to specified property—of all of that property or such part of that property as the Court thinks fit; or

(ii) in any other case—of all the property of the defendant; and

(d) may, subject to sub-section (3), include in the order such provision (if any) in relation to the operation of the order as the Court thinks fit.

(3) Paragraph (d) of sub-section (2) does not authorize the Court to include in an order directing the Official Trustee to take control of property a provision postponing the operation of the order.

Amended by
No. 13, 1980, s. 6

(4) Without limiting the power of the Court under paragraph (d) of sub-section (2), an order directing the Official Trustee to take control of property—

Amended by
No. 13, 1980, s. 6

(a) may set out conditions subject to which the order is to apply to all of that property, or to a specified part of that property;

(b) may make provision for a review of the operation of the order by the Court; and

(c) may make provision for meeting the reasonable living and business expenses of the defendant out of that property, or out of a specified part of that property.

s. 243E

Amended by
No. 13, 1980, s. 6

(5) The Court may refuse to make an order under sub-section (2) directing the Official Trustee to take control of property if the Commonwealth refuses or fails to give to the Court such undertakings as the Court deems appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

Amended by
No. 64, 1981,
s. 36

(6) For the purposes of an application under sub-section (1), the Minister, the Commissioner of Police or the Comptroller may, on behalf of the Commonwealth, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

Added by No. 13,
1980, s. 3

(7) Notwithstanding anything contained in the *Bankruptcy Act* 1966, moneys that have come into the possession, or under the control, of the Official Trustee in accordance with an order made under sub-section (2) shall not be paid into the Common Investment Fund established in pursuance of section 20B of that Act.

Court may
make further
orders

Inserted by
No. 92, 1979,
s. 13

Sub-section (1)
amended by
No. 13, 1980, s. 6

243F. (1) Where the Court makes, or has made, an order (in this section referred to as the "original order") under sub-section (1) of section 243E directing the Official Trustee to take control of specified property, or all of the property, of a person (in this section referred to as the "defendant"), the Court may, at the time it makes the original order or at any subsequent time, make such orders in relation to that property as the Court considers just and, without limiting the power so conferred on the Court, the Court may, at any time or from time to time, make an order—

- (a) varying the original order in respect of the property to which it relates or any provision included in the original order by virtue of paragraph (d) of sub-section (2) of section 243E;
- (b) regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the original order;
- (c) determining any question relating to the property to which the original order relates, including any question relating to the liabilities of the defendant, and the exercise of the powers, or the performance of the duties, of the Official Trustee, with respect to the property to which the original order relates;
- (d) directing the defendant to furnish to the Official Trustee, within a time specified in the order, a statement, verified by the oath or affirmation of the defendant, setting out such particulars of the property of the defendant as the Court deems proper;
- (e) for the examination of the defendant or another person before the Court or the Registrar of the Court concerning the nature and location of the property of the defendant; or
- (f) with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the Commonwealth in connection with the making of the original order.

s. 243F

(2) An application for an order under sub-section (1) may be made—

- (a) by the Official Trustee;
- (b) by the Minister, the Commissioner of Police or the Comptroller;
- (c) by the defendant; or
- (d) with the leave of the Court, by any other person.

Amended by
No. 13, 1980, s. 6;
No. 64, 1981,
s. 36

(3) Where the defendant or another person is examined before the Court or the Registrar of the Court in pursuance of an order under sub-section (1), a statement or disclosure made by him in answer to a question put to him in the course of the examination is not admissible against him in any civil or criminal proceedings except—

- (a) in a proceeding for giving false testimony in the course of the examination; or
 - (b) in a proceeding for the recovery of a pecuniary penalty for the purpose only of facilitating the assessment of the amount of the pecuniary penalty.
- (4) In this section, unless the contrary intention appears—
- (a) references to the original order shall be read as including references to the original order as varied under this section; and
 - (b) references to the Registrar of the Court shall be read as including references to a Deputy Registrar of the Court, a District Registrar of the Court and a Deputy District Registrar of the Court.

243G. (1) Where an order (in this section referred to as the “first order”) is in force under section 243E directing the Official Trustee to take control of specified property, or of all of the property, of a person who has been ordered to pay a pecuniary penalty to the Commonwealth, the Court may, on application made by the Minister, the Commissioner of Police or Comptroller, make an order (in this section referred to as the “second order”) directing the Official Trustee to pay to the Commonwealth, out of the property of the person that has come into its possession or under its control by virtue of the first order, an amount equal to the amount of the liability of the person in respect of that pecuniary penalty.

Official
Trustee to
discharge
pecuniary
penalty

Inserted by
No. 92, 1979,
s. 13

Sub-section (1)
amended by
No. 13, 1980, s. 6;
No. 64, 1981,
s. 36

(2) For the purpose of enabling the Official Trustee to comply with the direction contained in the second order, the Court may, by the second order or by a subsequent order, direct the Official Trustee to sell or dispose of such of the property that is subject to the charge that was created by sub-section 243J (1) upon the making of the first order as is specified in the second order or in the subsequent order, as the case may be.

Amended by
No. 13, 1980, s. 6

(3) As soon as practicable after the making of the second order, the Official Trustee—

Amended by
No. 13, 1980, s. 6

- (a) shall apply the moneys which have come into its possession or under its control by reason of the sale or disposition of any of the

s. 243G

property specified in the second order, or the subsequent order, or otherwise in the course of performing its duties in respect of the property to which the first order relates, in payment of the fees payable in connection with, and the expenses incurred by it in or in connection with, its performance of the duties imposed on it under the first order, including the expenses incurred by it in or in connection with the sale or disposition of any of the property to which the first order relates; and

- (b) shall, subject to sub-section (4), pay the remainder of the moneys referred to in paragraph (a), after the payments referred to in that paragraph have been made, to the Commonwealth.

Amended by
No. 13, 1980, s. 6

(4) Where the moneys to which paragraph (3) (b) applies exceed the liability of the person in respect of the pecuniary penalty payable by him to the Commonwealth, the Official Trustee shall—

- (a) pay to the Commonwealth, out of those moneys, an amount equal to the amount of that liability; and
(b) pay the balance of those moneys to the person.

Amended by
No. 13, 1980, s. 6

(5) Where the Official Trustee pays, in accordance with the second order, moneys to the Commonwealth in respect of the liability of a person to pay a pecuniary penalty to the Commonwealth, the liability of the person in respect of the pecuniary penalty shall, to the extent of the payment, be deemed to be discharged.

Sub-sections
(6)-(8) omitted
by No. 13, 1980,
s. 6

* * * * *

Revocation
of order
under section
243E

Inserted by
No. 92, 1979,
s. 13

243H. (1) Where, after an order under section 243E has been made in relation to a proceeding for the recovery of a pecuniary penalty—

- (a) no pecuniary penalty is imposed upon the determination of that proceeding;
(b) the pecuniary penalty imposed upon the determination of that proceeding is paid; or
(c) the Court is satisfied that it is, in all the circumstances, proper to do so,

the Court may, upon application being made to it by a person authorized to make an application under section 243F, revoke that order.

(2) The revocation of an order under section 243E that was made in relation to a proceeding for the recovery of a pecuniary penalty does not prevent the Court from making a further order under section 243E in relation to that proceeding.

(3) Without limiting the powers of the Court to make an order under sub-section (1), the Court may revoke an order under section 243E upon the applicant—

s. 243H

- (a) giving security satisfactory to the Court for the payment of any pecuniary penalty that may be imposed on him in the relevant proceeding; or
- (b) giving undertakings satisfactory to the Court concerning the property of the applicant.

(4) Where the Court revokes or has revoked, an order under section 243E, the Court may make such order or orders as it deems proper for or in relation to the discharge of the Official Trustee concerned from all liability in respect of the exercise by it of the powers conferred on it, and the performance by it of the duties imposed on it, under this Division in respect of the property of the person to whom the order under section 243E related.

Amended by
No. 13, 1980, s. 6

243J. (1) Where the Court makes, in relation to a proceeding (in this section referred to as the "relevant proceeding") for the recovery of a pecuniary penalty from a person, an order under section 243E directing the Official Trustee to take control of specified property, or of all of the property, of the person, upon the making of the order, there is created, by force of this section, a charge, on all the property to which the order relates, to secure the payment to the Commonwealth of any pecuniary penalty that the person may be ordered to pay in the relevant proceeding.

Pecuniary
penalty a
charge on
property
Inserted by
No. 92, 1979,
s. 13
Sub-section (1)
amended by
No. 13, 1980, s. 6

(2) Where a charge is created by sub-section (1) on any property of a person upon the making of an order under section 243E, the charge ceases to have effect in respect of the property—

Amended by
No. 13, 1980, s. 6

- (a) upon the order ceasing to apply to the property by reason of the variation or revocation of the order;
- (b) upon the determination of the relevant proceeding by way of the refusal of the Court to make an order for the payment of a pecuniary penalty by the person;
- (c) upon payment by the person of any pecuniary penalty that he has been ordered to pay in the relevant proceeding;
- (d) upon the person becoming a bankrupt;
- (e) upon the sale or other disposition of the property—
 - (i) in pursuance of an order made by the Court under section 243G; or
 - (ii) by the owner of the property with the consent of the Court or of the Official Trustee; or
- (f) upon the sale of the property to a *bona fide* purchaser for value who, at the time of purchase, has no notice of the charge,

whichever first occurs.

(3) The charge created on property by sub-section (1) by reason of the making of an order directing the Official Trustee to take control of the property—

Amended by
No. 13, 1980, s. 6

s. 243J

- (a) is subject to every charge or encumbrance to which the property was subject immediately before the order was made;
- (b) has priority over all other encumbrances whatsoever; and
- (c) subject to sub-section (2), is not affected by any change of ownership of the property.

Amended by
No. 13, 1980, s. 6

(4) Where a charge is created by sub-section (1) on property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind, the Official Trustee may cause the charge so created to be registered under the provisions of that law and, if the Official Trustee does so, a person who purchases or otherwise acquires the property after the registration of the charge shall, for the purposes of sub-section (2), be deemed to have notice of the charge.

Penalty for
selling, &c.,
property
subject to the
control of
official
receiver

243K. A person shall not, without the consent of the Court or of the Official Trustee, sell, or otherwise dispose of, or purport to sell or otherwise dispose of, any property that is, to his knowledge, subject to a charge under section 243J.

Penalty: \$2,000 or imprisonment for 2 years, or both.

Inserted by
No. 92, 1979,
s. 13; amended by
No. 13, 1980, s. 6

Sale of
property
before
bankruptcy

Inserted by
No. 92, 1979,
s. 13

Sub-section (1)
amended by
No. 13, 1980, s. 4;
No. 64, 1981,
s. 36

243L. (1) Where—

- (a) the Commonwealth has, within 6 months before the presentation of a petition, or after the presentation of a petition, against a person, received moneys from the Official Trustee or an Official Receiver in pursuance of an order under section 243G in relation to the liability of the person to pay a pecuniary penalty; and
- (b) the person subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition,

the Commonwealth shall pay to the trustee in the bankruptcy an amount equal to the amount paid to the Commonwealth in accordance with the order, less the taxed costs of the Minister, the Commissioner of Police or Comptroller in respect of the making of the order under section 243G.

(2) Where the Commonwealth has paid to the trustee in bankruptcy an amount in accordance with sub-section (1), the Commonwealth may prove in the bankruptcy for its debt as an unsecured creditor as if the order under section 243C had not been made.

(3) Notwithstanding anything contained in the *Bankruptcy Act* 1966, a person who purchases in good faith, property of a person who, after the purchase, becomes a bankrupt, under a sale of the property in pursuance of a direction given under section 243G acquires a good title to it as against the trustee in the bankruptcy.

s. 243M

243M. (1) Where, after the Official Trustee has been directed by an order under sub-section (1) of section 243G to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the presentation of a creditor's petition against the person is given to the Official Trustee, the Official Trustee—

Duties of the Official Trustee after receiving notice of presentation of creditor's petition, &c. Substituted by No. 13, 1980, s. 5

(a) shall refrain from taking action to sell property of the person in pursuance of any direction to do so contained in an order under that section; and

(b) shall not pay to the Commonwealth any moneys in pursuance of the direction to do so contained in the first-mentioned order,

until the petition has been dealt with by a bankruptcy court or has lapsed.

(2) Where, after the Official Trustee has been directed by an order under sub-section (1) of section 243G to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the reference to a bankruptcy court of a debtor's petition against the person is given to the Official Trustee, the Official Trustee—

(a) shall refrain from taking action to sell property of the person in pursuance of any direction to do so contained in an order under that section; and

(b) shall not pay to the Commonwealth any moneys in pursuance of the direction to do so contained in the first-mentioned order,

until a bankruptcy court has dealt with the petition.

(3) Where a person who is liable to pay a pecuniary penalty becomes a bankrupt (whether on a creditor's petition or otherwise), any property of the person in the possession, or under the control, of the Official Trustee in accordance with an order made under this Division shall be deemed to be in the possession, or under the control, of the Official Trustee as, or on behalf of, the trustee of the estate of the bankrupt, and not otherwise.

(4) In this section, "bankruptcy court" means a court having jurisdiction in bankruptcy under the *Bankruptcy Act 1966*.

243N. (1) Where—

(a) the Court has made an order under section 243E directing the Official Trustee to take control of all the property of a person;

(b) the Official Trustee has taken control of any property in the possession, or on the premises, of the person without notice of any claim by another person in respect of that property; and

(c) the person did not, at the date of the order, have any beneficial interest in the property referred to in paragraph (b),

Protection of official receiver from personal liability in certain cases
Inserted by No. 92, 1979, s. 13
Sub-section (1) amended by No. 13, 1980, s. 6

s. 243N

the Official Trustee is not personally liable for any loss or damage arising from its having taken control of the property sustained by a person claiming the property or an interest in the property, or for the cost of proceedings taken to establish a claim to the property or to an interest in the property, unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of control of the property.

Amended by
No. 13, 1980, s. 6

(2) Where the Official Trustee has, in accordance with an order under section 243E, taken control of property of a person specified in the order, the Official Trustee is not personally liable for any loss or damage arising from its having taken control of the property (being loss or damage sustained by some other person claiming the property or an interest in the property), or for the cost of proceedings taken to establish a claim to the property, or to an interest in the property, unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of control of the property.

Amended by
No. 13, 1980, s. 6

(3) The Official Trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of the Commonwealth or of a State or Territory upon or in respect of property of which it has been directed by an order under section 243E to take control, being rates, land tax or municipal or other statutory charges that fall due on or after the date of that order, except to the extent, if any, of the rents and profits received by the Official Trustee in respect of that property on or after the date of that order.

Amended by
No. 13, 1980, s. 6

(4) Where the Official Trustee who was been directed by an order under section 243E to take control of a business carried on by a person carries on that business, the Official Trustee is not personally liable for any payment in respect of long service leave for which the person was liable or for any payment in respect of long service leave to which a person employed by the Official Trustee in its capacity of manager of the business, or the legal personal representative of such a person, becomes entitled after the date of that order.

(5) In this section, "interest", in relation to property, means—

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege over, or in connection with, the property.

Fees payable
to official
receiver
Inserted by
No. 92, 1979,
s. 13; amended by
No. 13, 1980, s. 6

243P. Where the Official Trustee takes control of property by virtue of an order of the Court under section 243E, the Official Trustee is entitled to receive fees, in respect of the exercise of its powers and the performance of its duties in relation to the property, equal to the fees that it would be entitled to receive if it were exercising the powers or performing the duties in consequence of its having taken control of the property by virtue of a direction given under section 50 of the *Bankruptcy Act* 1966.

s. 243Q

243Q. Where the Court makes an order under section 243E or 243F in relation to property, the Official Trustee shall give or publish such notices (if any) of, or in respect of, the order as are required by the regulations or as the court directs.

Notices
Inserted by
No. 92, 1979,
s. 13; amended by
No. 13, 1980, s. 6

243R. (1) Where, before the Court makes an order directing a person to pay a pecuniary penalty in respect of a particular prescribed narcotics dealing engaged in by him, or of prescribed narcotics dealings engaged in by him during a particular period, any property of the person to which section 229A applied by reason of that prescribed narcotics dealing, or of a prescribed narcotics dealing during that period, had been seized as forfeited goods—

Reduction of
pecuniary
penalty
Inserted by
No. 92, 1979,
s. 13

- (a) if, before the imposition of the penalty, the property had been condemned or was deemed to have been condemned—the penalty shall be deemed to be reduced by an amount equal to the value of the property at the time when it was seized;
- (b) if, after the imposition of the penalty and before the penalty is paid, the property is condemned or is deemed to be condemned or the person consents to the forfeiture of the property—the liability of the person in respect of the penalty shall be deemed to be reduced by an amount equal to the value of the property at the time when it was seized; and
- (c) if the penalty is paid before the property is condemned or is to be deemed to be condemned—the Commonwealth is liable to pay to the person an amount equal to the value of the property at the date of its seizure.

(2) After a pecuniary penalty is imposed on a person in respect of a particular prescribed narcotics dealing engaged in by the person, or of prescribed narcotics dealings engaged in by him during a particular period, property of the person to which section 229A applies by virtue of that dealing, or of such a dealing during that period, shall not be seized as forfeited goods.

(3) The Court may make an order, in respect of property to which section 229A applies, being property that has been seized as forfeited goods, determining the value, at the time when it was seized, of that property for the purposes of this section.

243S. Jurisdiction is conferred on the Court to hear and determine applications under this Division.

Jurisdiction
of the Court
Inserted by
No. 92, 1979,
s. 13

s. 244

PART XIV—CUSTOMS PROSECUTIONS

Interpretation

Amended by
No. 108, 1952,
s. 20; No. 92,
1979, s. 14

244. Proceedings by the Customs for the recovery of penalties other than a pecuniary penalty referred to in section 243B under this Act or for the condemnation of ships, aircraft or goods seized as forfeited are herein referred to as Customs Prosecutions.

How instituted

Amended by
No. 28, 1966, s. 4;
No. 216, 1973,
s. 3; No. 19, 1979,
s. 123; No. 64,
1981, s. 37

245. Customs prosecutions may be instituted in the name of the Minister 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; or
- (c) in the Supreme court of the Northern Territory of Australia,

and when the prosecution is for a pecuniary penalty not exceeding \$1,000 or the excess is abandoned the Customs prosecution may be instituted in the name of the Collector in

- (d) any County Court, District Court, Local Court or Court of summary jurisdiction of a State or of the Australian Capital Territory or the Northern Territory of Australia.

Evidence of authority to institute proceedings

Inserted by
No. 36, 1910,
s. 12

245A. (1) Where any Customs prosecution has been instituted by an officer in the name of the Collector, the prosecution shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Collector.

(2) The production of a telegram purporting to be signed by the Collector, and purporting to authorize an officer to institute any Customs prosecution or proceedings, shall be admissible in evidence in the prosecution or proceedings and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceedings in the name of the Collector.

Defendant to have right of trial in High or State Court

Amended by
No. 28, 1966, s. 4;
No. 216, 1973,
s. 3; No. 19, 1979,
s. 123; No. 64,
1981, s. 37

246. In any Customs prosecution where the penalty exceeds \$200 and the excess is not abandoned the defendant within 7 days after service of process shall have the right in manner prescribed to elect to have the case tried in the Supreme Court of the State or Territory in which such prosecution has been instituted and thereupon the proceedings shall stand removed accordingly and may be continued as if originally instituted in the Court to which they are so removed.

Prosecutions in accordance with practice rules

Amended by
No. 216, 1973,
s. 3; No. 19, 1979,
s. 123

247. Every Customs prosecution in a Supreme Court may be commenced prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

248. Subject to the provisions of this Act the provisions of the law relating to summary proceedings in force in the State or Territory where the proceedings are instituted shall apply to all Customs prosecutions before a Court of summary jurisdiction in a State or Territory, and an appeal shall lie from any conviction order for condemnation or order of dismissal to the Court and in the manner provided by the law of the State or Territory where such conviction or order is made for appeals from convictions or orders of dismissal, and notwithstanding anything to the contrary in the law of the State or Territory, an appeal shall lie from an order of dismissal to any court to which and in the manner in which an appeal lies from a conviction.

State Court practice
Amended by
No. 12, 1923,
s. 34; No. 19,
1979, s. 123

249. Customs prosecutions may be instituted at any time within 5 years after the cause thereof.

Commence-
ment of
prosecutions
Amended by
No. 64, 1981,
s. 37.

250. All informations summonses convictions condemnations and warrants shall suffice if the offence or forfeiture is set forth as nearly as may be in the words of this Act.

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

250A. Where in any proceedings on behalf of the Customs in relation to any goods subject to the control of the Customs it is necessary to allege any property in the goods, the goods may be alleged to be the property of the Collector without mentioning his name.

Property in
goods subject
to control of
Customs
Inserted by
No. 36, 1910,
s. 13

251. No objection shall be taken or allowed to any information or summons for any alleged defect therein in substance or in form or for any variance between such information or summons and the evidence adduced at the hearing in support thereof, and the Court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable, and if any such defect or variance shall appear to the Court to be such that the defendant has been thereby deceived or misled it shall be lawful for the Court upon such terms as it may think just to adjourn the hearing of the case to some future day.

No objection
for
informality

252. No conviction warrant of commitment or condemnation order or other proceeding matter or thing done or transacted in relation to the execution or carrying out of any Customs Act shall be held void quashed or set aside by reason of any defect therein or want of form and no party shall be entitled to be discharged out of custody on account of such defect.

Conviction
not to be
quashed

253. No witness on behalf of the Minister or Collector in any Customs prosecution shall be compelled to disclose the fact that he received any information or the nature thereof or the name of the person who gave such information, and no officer appearing as a witness shall be

Protection to
witnesses

s. 253

compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

Defendant
competent
witness

254. (1) In every Customs prosecution the defendant shall be competent to give evidence.

(2) In every Customs prosecution except for an indictable offence or for an offence directly punishable by imprisonment the defendant shall be compellable to give evidence.

Averment of
prosecutor
sufficient
Substituted by
No. 12, 1923,
s. 35

255. (1) In any Customs prosecution the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter or matters averred.

(2) This section shall apply to any matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(3) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4) The foregoing provisions of this section shall not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

Proof of
proclamation,
& c.
Amended by
No. 14, 1968, s. 3

256. The production of the *Gazette* containing any proclamation, gazette notice or regulation appearing to have been issued or made under this Act or the production of any document certified by the Comptroller or the Collector of Customs for a State or Territory to be a true copy of, or extract from any such proclamation, gazette notice, or regulation issued or made under this Act shall be *prima facie* evidence of the issue or making of such proclamation, gazette notice, or regulation, and that the same is in force.

Minimum
penalties

257. No minimum penalty imposed by this Act shall be liable to reduction under any power of mitigation which would but for this section be possessed by the Court.

Sections 258 and
258A repealed by
No. 37, 1957,
s. 11

* * * * *

s. 259

259. When any pecuniary penalty adjudged against any person is unpaid the Collector may levy the same by sale of any goods belonging to such person which may then or thereafter be subject to the control of the Customs.

Collector may levy on goods in his possession

* * * * *

Section 260 repealed by No. 37, 1957, s. 11

261. No person shall be twice imprisoned upon the same conviction but the suffering of imprisonment for non-payment of a penalty shall not release the penalty or affect the right of the Customs to collect the amount in any manner provided by this Act other than by imprisonment of the person convicted.

Imprisonment not to release penalty

262. Where the committal of any offence causes a forfeiture of any goods the conviction of any person for such offence shall have effect as a condemnation of the goods in respect of which the offence is committed.

Conviction to operate as a condemnation

263. In a Customs prosecution, whether commenced before or after the commencement of this section, a court may award costs against a party, and, where an amount of costs is awarded against a party other than the prosecutor, section 259 and any provision of a law of a State or Territory that, by virtue of an Act other than this Act, applies in relation to the recovery of pecuniary penalties under this Act apply in relation to the recovery of the amount of costs so awarded as if it were a pecuniary penalty adjudged to be paid by the party under this Act.

Parties may recover costs
Substituted by No. 48, 1963, s. 27; amended by No. 216, 1973, s. 3; No. 28, 1974, s. 7

264. (1) All penalties and forfeitures recovered under any Customs Act shall be applied to such purposes and in such proportions as the Minister may direct.

Application of penalties

(2) This section does not apply to—

Added by No. 64, 1981, s. 34

- (a) penalties recovered in proceedings under sub-section (1) of section 243B;
- (b) penalties recovered in proceedings instituted by a member of the Australian Federal Police; or
- (c) forfeitures of narcotic-related goods.

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

265. In this Part—

“determined”, in relation to a quantity or a value, means determined in accordance with a tender;

“item of a Customs Tariff” and “proposed item of a Customs Tariff” have the same respective meanings as in Part XVI;

Part XV repealed by No. 110, 1980, s. 27; inserted by No. 45, 1981, s. 4

Interpretation

Repealed by No. 110, 1980, s. 27; inserted by No. 45, 1981, s. 4

s. 265

"particular goods" includes goods included in a particular class or kind of goods;

"scheme" means a scheme formulated by the Minister under section 266;

"year" means a period of 12 months.

Tender schemes

Repealed by
No. 110, 1980,
s. 27; inserted by
No. 45, 1981, s. 4

266. (1) The Minister may formulate a scheme for calling, and dealing with, tenders for the right to import a determined quantity of particular goods, or particular goods of a determined value, during a year at concessional rates of duty.

(2) A call for tenders that relates to determined quantities of particular goods shall include a statement that, for the purposes of the application of the *Customs Undertakings (Penalties) Act* 1981 and the *Customs Securities (Penalties) Act* 1981 in relation to the particular goods the subject of the call, the value of the goods is to be calculated by reference to a value set out in the statement as the value of an appropriate unit of the goods.

(3) In determining the value of an appropriate unit of particular goods to be set out in a statement referred to in sub-section (2), the Minister shall have regard to the average value of the corresponding unit in relation to goods of the same kind that were imported into Australia and entered for home consumption during the financial year that ended on the 30 June immediately preceding the date on which the call for tenders is made.

(4) A call for tenders shall include a statement that, for the purposes of the application of the *Customs Undertakings (Penalties) Act* 1981 and the *Customs Securities (Penalties) Act* 1981 in relation to the particular goods the subject of the call, the prescribed percentage of the value of the goods is to be the percentage set out in the statement.

Undertakings relating to tenders

Repealed by
No. 110, 1980,
s. 27; inserted by
No. 45, 1981, s. 4

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

- (a) the *Customs Tariff Act* 1966 is so altered or proposed to be so altered that rates of duty determined in accordance with his tender are set out in items, or proposed items, of a Customs Tariff that are expressed to apply to goods as prescribed by by-law; and

- (b) the Minister makes a determination under section 273 by virtue of which those items or proposed items apply to the quantity determined in accordance with his tender of those goods, or the quantity of those goods having the value determined in accordance with his tender, to be imported by that person during that year,

he will, during that year, import into Australia that quantity of those goods, or the quantity of those goods having that value, and enter for home consumption, under any of those items, or proposed items, or under any appropriate item, or proposed item, of a Customs Tariff that is not expressed to apply to goods as prescribed by by-law, the goods so imported.

(2) An undertaking referred to in sub-section (1) that relates to a determined quantity of goods shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the value of those goods is to be calculated by reference to the value per unit of those goods as set out in the statement, being the value per unit set out in the statement included by the Minister, in accordance with sub-section (2) of section 266, in the relevant call for tenders.

(3) An undertaking referred to in sub-section (1) shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the prescribed percentage of the value of the goods is to be the percentage set out in the statement, being the percentage set out in the statement included by the Minister, in accordance with sub-section (4) of section 266, in the relevant call for tenders.

(4) In this section, a reference to the relevant call for tenders, in relation to an undertaking, shall be read as a reference to the call for tenders in accordance with which the tender to which the undertaking relates was furnished.

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

Transfers of rights to import goods at concessional rates of duty

(2) The Minister shall not give an approval to a transfer under a scheme of a right to import a specified quantity of particular goods, or particular goods of a specified value, unless the transferee—

Repealed by No. 110, 1980, s. 27; inserted by No. 45, 1981, s. 4

- (a) gives an undertaking, in writing, in terms satisfactory to the Minister, that, if by virtue of a determination under section 273 the

s. 268

items, or proposed items, of a Customs Tariff to which the undertaking given by the transferor in relation to the goods related were to apply to goods imported by the transferee in the exercise of the right, the transferee will, in the exercise of that right, import into Australia that quantity of those goods, or the quantity of those goods having that value, and enter them for home consumption under any of those items or proposed items or under any appropriate item, or proposed item, of a Customs Tariff that is not expressed to apply to goods as prescribed by by-law; and

- (b) if so required by a Collector, gives a security for payment of any penalty in connection with the undertaking that the transferee may become liable to pay to the Commonwealth under the *Customs Undertakings (Penalties) Act 1981*.

(3) An undertaking referred to in sub-section (2) that relates to a specified quantity of goods shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the value of those goods is to be calculated by reference to the value per unit of those goods as set out in the statement, being a value per unit that was set out in the corresponding statement in the undertaking given by the transferor in relation to those goods.

(4) An undertaking referred to in sub-section (2) shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the prescribed percentage of the value of the goods is to be the percentage set out in the statement, being the percentage set out in the corresponding statement in the undertaking given by the transferor in relation to those goods.

Section 268A
repealed by
No. 110, 1980,
s. 27

Revocation
or variation
of
undertaking

Repealed by
No. 110, 1980,
s. 27; inserted by
No. 45, 1981, s. 4

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

Recovery of
penalties
Inserted by
No. 45, 1981, s. 4

269A. A penalty payable by a person under the *Customs Undertakings (Penalties) Act 1981* or the *Customs Securities (Penalties) Act 1981* is a debt due to the Commonwealth, and the Commonwealth may recover the amount of the penalty by action in a court of competent jurisdiction.

PART XVI—REGULATIONS AND BY-LAWS

270. (1) The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Customs, and in particular for prescribing—

- (a) the nature, size, and material of the packages in which imported goods or goods for export, or goods for conveyance coastwise from any State to any other State, are to be packed, or the coverings in which they are to be wrapped;
- (b) the maximum or minimum weight or quantity of imported goods, or goods for export, or goods for conveyance coastwise from any State to any other State which may be contained in any one package;
- (c) the conditions of preparation or manufacture for export of any articles used for food or drink by man or used in the manufacture of articles used for food or drink by man;
- (d) the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export; and
- (e) the conditions of carriage of goods subject to the control of the Customs, and the obligations of persons accepting such goods for carriage.

(2) The regulations may prescribe penalties not exceeding \$250 in respect of any contravention of any of the regulations.

Heading amended by No. 108, 1952, s. 18

Regulations to have force of law

Sub-section (1) amended by No. 36, 1910, s. 15; No. 12, 1923, s. 36

Added by No. 36, 1910, s. 15; amended by No. 28, 1966, s. 4; No. 54, 1967, s. 10; No. 64, 1981, s. 37

271. Where—

- (a) an item of a Customs Tariff, or a proposed item of a Customs Tariff, is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; or
- (b) under an item of a Customs Tariff, or a proposed item of a Customs Tariff, any matter or thing is expressed to be, or is to be determined, as prescribed or defined by by-law,

the Minister may, subject to the succeeding sections of this Part, make by-laws for the purposes of that item or proposed item.

Minister may make by-laws

Substituted by No. 47, 1953, s. 6; amended by No. 29, 1965, s. 13

272. The Minister may specify in a by-law made for the purposes of an item, or a proposed item, of a Customs Tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law—

- (a) the goods, or the class or kind of goods, to which that item or proposed item applies;

By-laws specifying goods

Repealed by No. 9, 1910, s. 2; inserted by No. 47, 1953, s. 6; amended by No. 29, 1965, s. 14

s. 272

- (b) the conditions, if any, subject to which that item or proposed item applies to those goods or to goods included in that class or kind of goods; and
- (c) such other matters as are necessary to determine the goods to which that item or proposed item applies.

Determi-
nations

Repealed by
No. 9, 1910, s. 2;
inserted by No.
47, 1953, s. 6

Sub-section (1)
amended by No.
29, 1965, s. 15

273. (1) The Minister may determine, by instrument in writing, that, subject to the conditions, if any, specified in the determination, an item, or a proposed item, of a Customs Tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law shall apply, or shall be deemed to have applied, to the particular goods specified in the determination.

(2) The Minister may make a determination under the last preceding sub-section for the purposes of an item, or a proposed item, of a Customs Tariff whether or not he has made a by-law for the purposes of that item or proposed item.

(3) Where, under this section, the Minister determines that an item, or a proposed item, of a Customs Tariff shall apply, or shall be deemed to have applied, to goods, that item or proposed item shall, subject to this Part and to the conditions, if any, specified in the determination, apply, or be deemed to have applied, to those goods as if those goods were specified in a by-law made for the purposes of that item or proposed item and in force on the day on which those goods are or were entered for home consumption.

By-laws and
determi-
nations for
purposes of
repealed
items

Inserted by No.
47, 1953, s. 6

273A. The Minister may make a by-law or determination for the purposes of an item of a Customs Tariff notwithstanding that the item has been repealed before the making of the by-law or determination, but the by-law shall not apply to, and the determination shall not be made in respect of, goods entered for home consumption after the repeal of that item.

Publication
of by-laws
and
notification
of determi-
nations

Inserted by No.
47, 1953, s. 6

273B. (1) A by-law made under this Part—

- (a) shall be published in the *Gazette*, and has no force until so published;
- (b) shall, subject to this Part—
 - (i) take effect, or be deemed to have taken effect, from the date of publication, or from a date (whether before or after the date of publication) specified by or under the by-law; or
 - (ii) have effect or be deemed to have had effect, for such period (whether before or after the date of publication) as is specified by or under the by-law; and

s. 273B

- (c) shall not be deemed to be a Statutory Rule within the meaning of the *Rules Publication Act 1903-1939*⁵.

(2) Notice of the making of a determination under this Part shall be published in the *Gazette* as soon as practicable after the making of the determination and the notice shall specify—

- (a) the kind of goods to which the determination applies;
- (b) the conditions, if any, specified in the determination; and
- (c) the item or proposed item for the purposes of which the determination was made.

273C. This Part does not authorize the making of a by-law or determination which has the effect of imposing duty, in relation to goods entered for home consumption before the date on which the by-law is published in the *Gazette* or the determination is made, as the case may be, at a rate higher than the rate of duty payable in respect of those goods on the day on which those goods were entered for home consumption.

Retrospective by-laws and determinations not to increase duty

Inserted by No. 47, 1953, s. 6

273D. Where—

- (a) a by-law or determination is made for the purposes of a Customs Tariff proposed in the Parliament or of a Customs Tariff as proposed to be altered by a Customs Tariff alteration proposed in the Parliament; and
- (b) the proposed Customs Tariff becomes a Customs Tariff or the proposed alteration is made, as the case may be,

By-laws and determinations for purposes of proposals

Inserted by No. 47, 1953, s. 6

the by-law or determination shall have effect for the purposes of that Customs Tariff or of that Customs Tariff as so altered, as the case may be, as if the by-law or determination had been made for those purposes and the proposed Customs Tariff or the Customs Tariff as proposed to be altered, as the case may be, had been in force on the day on which the by-law or the determination was made.

* * * * *

Section 273E repealed by No. 29, 1965, s. 16

273EA. (1) The Minister may, at any time when the Parliament is prorogued or the House of Representatives has expired by effluxion of time, has been dissolved or is adjourned otherwise than for a period not exceeding 7 days, publish in the *Gazette* a notice that it is intended, within 7 sitting days of the House of Representatives after the date of the publication of the notice, to propose in the Parliament a Customs Tariff or Customs Tariff alteration in accordance with particulars specified in the notice and operating as from such time as is specified in the notice, not being—

Notification of proposals when House of Representatives is not sitting

Inserted by No. 42, 1960, s. 4

Sub-section (1) amended by No. 48, 1963, s. 29; No. 64, 1981, ss. 35 and 37

s. 273EA

- (a) in the case of a Customs Tariff or Customs Tariff alteration that could have the effect of making the duty payable by any person importing goods greater than the duty that would, but for that Customs Tariff or Customs Tariff alteration, be payable—a time earlier than the time of publication of the notice; or
- (b) in any other case—a time earlier than 6 months before the time of publication of the notice.

Amended by
No. 28, 1974, s. 7

(2) Where notice of intention to propose a Customs Tariff or a Customs Tariff alteration has been published in accordance with this section, the Customs Tariff or Customs Tariff alteration shall, for the purposes of this Act (other than section 226) and any other Act, be deemed to be a Customs Tariff or a Customs Tariff alteration, as the case may be, proposed in the Parliament.

Interpretation

Inserted by
No. 47, 1953, s. 6
Sub-section (1)
amended by
No. 29, 1965,
s. 17

273F. (1) In this Part—

“proposed item of a Customs Tariff” means—

- (a) an item of a Customs Tariff proposed in the Parliament; or
- (b) an item of a Customs Tariff as proposed to be altered by a Customs Tariff alteration proposed in the Parliament.

Added by No. 29,
1965, s. 17

(2) Unless the contrary intention appears, a reference in this Part to an item of a Customs Tariff shall be read as including a reference to a sub-item of such an item, a paragraph of such a sub-item and a sub-paragraph of such a paragraph.

PART XVII—MISCELLANEOUS

Briefing of
Leader of
Opposition
on certain
matters

Inserted by
No. 92, 1979,
s. 15

273G. The Minister shall, from time to time, and not less frequently than once each year, arrange for the Leader of the Opposition in the House of Representatives to be briefed on matters relating to contraventions of this Act in respect of narcotic substances.

Review of
decisions

Inserted by
No. 110, 1980,
s. 28

273GA. (1) Subject to this section, applications may be made to the Administrative Appeals Tribunal for review of—

- (a) a demand made by a Collector under section 35A;
- (b) a decision of the Comptroller or a Collector for the purposes of Part V;
- (c) a decision by the Minister under section 119 not to grant a Certificate of Clearance;
- (d) a refusal by a Collector under section 126;
- (e) quota orders, and variations of quota orders, made by the Minister under sections 132B and 132C;

- (f) a direction of the Minister under paragraph (a) of sub-section (8) of section 151;
- (g) a decision of the Collector under section 151A;
- (h) a specification of the Minister under sub-section (4) of section 157;
- (j) a direction by the Minister under section 164B; and
- (k) a decision of the Minister, the Comptroller, or a Collector for the purposes of Part XI.

(2) Where a dispute referred to in sub-section (1) of section 167 has arisen and the owner of the goods has, in accordance with that sub-section, paid under protest the sum demanded by the Collector, an application may be made to the Tribunal for review of the demand made by the Collector for that sum.

(3) Sub-section (3) of section 119 does not apply where a Certificate of Clearance is granted to the ship or aircraft referred to in that sub-section as a result of a review by the Tribunal.

(4) A person is not entitled to apply for a review under section 132E of a quota order, or a variation of a quota order, if an application may be made to the Tribunal under paragraph (e) of sub-section (1) in respect of the quota order or the variation, as the case may be.

(5) An application may not be made to the Tribunal under sub-section (2) unless the application is made within the time specified in paragraph (a) or (b) of sub-section (4) of section 167, whichever is appropriate.

(6) Where the owner of goods has made an application to the Tribunal under sub-section (2), he is not entitled to bring an action under sub-section (2) of section 167.

(7) Where, on an application made under sub-section (2), the Tribunal has made a decision reviewing a demand made by the Collector, the proper duty payable in respect of the goods concerned shall be deemed to be—

- (a) the sum determined to be the proper duty by, or ascertained to be the proper duty in accordance with—
 - (i) the decision of the Tribunal; or
 - (ii) an order of a court on appeal from that decision; or
- (b) the sum paid under protest,

whichever is the less.

(8) In this section, "decision" has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

s. 273H

Review of
decisions
under
Customs
Tariff Act

Inserted by
No. 110, 1980,
s. 28

273H. Applications may be made to the Administrative Appeals Tribunal for review of—

- (a) a direction given by the Minister under section 7 of the *Customs Tariff Act* 1966; and
- (b) determinations made by the Minister under sections 8 and 31 of the *Customs Tariff Act* 1966.

Commis-
sioned ships
and aircraft
to be
reported

Amended by
No. 12, 1923, s. 2;
No. 56, 1950,
s. 10; No. 14,
1968, s. 3

274. The person in command of any ship or aircraft holding commission from His Majesty or from any foreign State having on board any goods other than ship's or aircraft's stores laden in parts beyond the seas or in Australia shall when called upon by the Comptroller or the Collector of Customs for a State or Territory or an officer specially authorized by the Minister or the Comptroller or the Collector of Customs for a State or Territory so to do—

- (a) deliver an account in writing of the quantity of such goods, the marks and numbers thereof, and names of the shippers and consignees, and declare to the truth thereof;
- (b) answer questions relating to such goods.

Commis-
sioned ships
and aircraft
may be
searched

Amended by
No. 12, 1923, s. 2;
No. 56, 1950,
s. 11; No. 110,
1980, s. 29

275. Ships or aircraft under commission from His Majesty or any foreign State having on board any goods other than ships' or aircraft's stores laden in parts beyond the seas or in Australia may be boarded and searched by an officer especially authorized as mentioned in the last section in the same manner as other ships or aircraft, and the officer may secure any such goods and for that purpose bring them ashore.

Direction not
to move a
ship or
aircraft from
a boarding
station

Inserted by
No. 48, 1963,
s. 30

275A. (1) Where a Collector considers that it is desirable, for the purposes of the Customs, to hold a ship or aircraft at a boarding station, the Collector may, by notice in writing delivered to the master of the ship or the pilot of the aircraft before it leaves the boarding station, direct the master or pilot not to move the ship or aircraft from the boarding station until the master or pilot receives permission, in writing, from a Collector to do so.

(2) A person shall not disobey a direction given to him, and in force, under this section.

Penalty: \$1,000.

(3) Where a direction not to move a ship or aircraft from a boarding station has been given under sub-section (1)—

- (a) the direction ceases to have any force or effect at the expiration of a period of 3 days after the day on which the direction is given; and

Amended by
No. 28, 1966, s. 4;
No. 64, 1981,
s. 37

Amended by
No. 64, 1981,
s. 37

s. 275A

- (b) no further direction in respect of the ship or aircraft shall be given while the ship or aircraft remains at the boarding station.

(4) Where a Collector (not being the Comptroller or the Collector of Customs for a State or Territory) gives a direction under sub-section (1) not to move a ship or aircraft from a boarding station, the collector shall forthwith notify—

Amended by
No. 14, 1968, s. 3;
No. 64, 1981,
s. 37

- (a) where the boarding station is in the Australian Capital Territory—the Comptroller;
- (b) where the boarding station is in a State—the Collector of Customs for the State; or
- (c) where the boarding station is in the Northern Territory—the Collector of Customs for the Northern Territory,

of the giving of the direction.

(5) Where—

- (a) a ship or aircraft is held at a boarding station by virtue of a direction given under sub-section (1); and
- (b) the Comptroller or the Collector of Customs for a State or Territory is satisfied that no purpose of the Customs is served by holding the ship or aircraft at the boarding station,

Amended by
No. 14, 1968, s. 3;
No. 28, 1974, s. 7

he shall forthwith revoke the direction.

(6) In proceedings for an offence under this section with respect to a direction, a certificate by a person referred to in the last preceding sub-section that he is satisfied that, up to the time the offence is alleged to have been committed—

- (a) the permission referred to in the direction had not been given; and
- (b) the direction had not been revoked,

is evidence of the matters as to which the person has certified that he is satisfied.

276. As to sales by the Collector—

Collectors' sales

- (a) The goods shall be sold by auction or by tender and after such public notice as may be prescribed, and where not prescribed after reasonable public notice.
- (b) The goods may be sold either free of or subject to duty and charges and the price shall be paid in cash on the acceptance of the bidding or tender.
- (c) No bidding or tender shall be necessarily accepted and the goods may be re-offered until sold at a price satisfactory to the Collector.

s. 277

Proceeds of
sales

Amended by
No. 12, 1923,
s. 38; No. 36,
1978, s. 3

277. The proceeds of any goods sold by the Collector shall be applied as follows:

Firstly, in the payment of the expenses of the sale.

Secondly, in payment of the duty.

Thirdly, in payment of the warehouse rent and charges.

Fourthly, in payment of the harbour and wharfage dues and freight if any due upon the goods if written notice of such harbour and wharfage dues and freight shall have been given to the Collector.

And the balance if any shall be paid to the Minister for Finance on account of the person entitled thereto.

Examination
of goods

Inserted by
No. 7, 1934, s. 24;
repealed by
No. 80, 1950, s. 3;
inserted by
No. 104, 1968,
s. 36

278. The right of a person under this Act to examine goods includes the right to count, measure, weigh or gauge the goods.

SCHEDULES

SCHEDULE I

THE COMMONWEALTH OF AUSTRALIA

Security to the Customs

By this Security the subscribers are, pursuant to the *Customs Act 1901*, bound to the Customs of the Commonwealth of Australia in the sum of—[*here insert amount or mode of ascertaining amount intended to be paid in default of compliance with condition*—subject only to this condition that if—[*here insert the condition of the security*—then this security shall be thereby discharged.*

Dated the day of 19

Names and descriptions of subscribers	Signatures of subscribers	Signatures of witnesses

*NOTE—If liability is not intended to be joint and several and for the full amount, here state what is intended as, for example, thus—"The liability of the subscribers is joint only," or "the liability of (mentioning subscriber) is limited to (here state amount of limit of liability or mode of ascertaining limit)."

Schedule I
amended by
No. 28, 1974, s. 7;
No. 154, 1977,
s. 12-

* * * * *

Schedule II
repealed by
No. 12, 1923,
s. 39

SCHEDULE III

THE COMMONWEALTH OF AUSTRALIA

Writ of Assistance

His Majesty the King

Amended by
No. 14, 1968, s. 3;
No. 28, 1974, s. 7;
No. 154, 1977,
s. 12; No. 110,
1980, s. 30

To all Peace Officers, and to all whom it may concern: Greeting.

WE command you to permit A.B. of an Officer of the Customs of the Commonwealth of Australia, and his assistants, and each and every of them at any time in the day or night to enter in and search any house premises or place and to break open and search the same and any chests trunks or packages in which goods may be or are supposed to be and to seize any goods forfeited to Us and any goods that he the said A.B. has reasonable cause to believe are forfeited to Us, and to take such goods to such place of security as Our Collector of Customs for in Our said Commonwealth shall direct.

And We grant to the said A.B. all powers which are capable of being granted by a Writ of Assistance.

And We command all Peace Officers and all Our loving subjects in Our said Commonwealth of Australia upon sight of this Our Writ, and upon being so required by the said A.B. to be aiding and assisting the said A.B. in the matters aforesaid: Herein fail not at your peril:

And We declare that this Our Writ of Assistance shall remain in force so long as the said A.B. remains an Officer of Customs in Our Commonwealth of Australia whether in his present capacity or not.

Witness (name and description of the Judge testing the writ) at

the day of One thousand nine hundred and

(SEAL)

By the Court.

SCHEDULE IV

THE COMMONWEALTH OF AUSTRALIA

Customs Warrant

To

You are hereby authorized to enter into, at any time in the day or night, if necessary, and search any house, premises, or place; and to break open the same, and any chests, trunks, or packages in which goods may be or are supposed to be and to seize and take away any forfeited goods or goods which you have reasonable grounds to believe are forfeited, you may find therein, and forthwith to put and secure the same in such place of security as the Collector may direct: And for so doing this shall be your sufficient warrant.

This warrant has force throughout

This warrant shall remain in force for a period of from the date thereof unless revoked before the expiration of that period.

Dated this day of in the year One thousand nine hundred and

(CUSTOMS STAMP)

Signature.

Amended by
No. 12, 1923,
s. 40; No. 66,
1954, s. 5; No. 37,
1957, s. 12;
No. 48, 1963,
s. 31; No. 28,
1974, s. 7;
No. 154, 1977,
s. 12; No. 110,
1980, s. 30

Added by No. 12,
1923, s. 41;
amended by
No. 56, 1950,
s. 12; No. 48,
1963, s. 32;
No. 28, 1974, s. 7;
No. 154, 1977,
s. 12

SCHEDULE V

THE COMMONWEALTH OF AUSTRALIA

Customs Warrant

To

WHEREAS information in writing has been given on oath to me that goods have been unlawfully imported, exported, undervalued or entered or illegally dealt with or that it is intended to unlawfully import, export, undervalue or enter or illegally deal with goods, (or

Whereas goods have been seized or detained)

You are hereby authorized, in the event of failing to comply immediately with any requirement made in pursuance of section two hundred and fourteen of the *Customs Act* 1901-1923, to enter into, at any time of the day or night, and search, any house premises or place in which any books or documents relating to the goods are or are supposed to be; and to break open any such house premises or place and search any person therein or thereon and any chests trunks or packages therein or thereon; and to take possession of, remove and impound any of those books and documents which are found: And for so doing this shall be your sufficient warrant.

This warrant has force throughout

This warrant shall remain in force for a period of one month from the date thereof unless revoked before the expiration of that period.

Dated this

day of

19

(CUSTOMS STAMP)

(Signature)

Substituted by
No. 154, 1977,
s. 11

SCHEDULE VI

Section 4

Column 1 Name of substance	Column 2 Trafficable quantity
Acetorphine	Grams
Acetylcodeine	2.0
Acetyldihydrocodeine	2.0
Acetylmethadol	2.0
Allylprodine	2.0
Alphacetylmethadol	10.0
Alphameprodine	0.2
Alphamethadol	0.2
Alphaprodine	25.0
Amphocloral	2.0
3-(2-Aminopropyl) indole	2.0
Amphetamine	2.0
Anileridine	25.0
Barbiturates	50.0
Benzethidine	10.0
Benzylmorphine	5.0
Betacetylmethadol	5.0
Betameprodine	5.0
Betamethadol	5.0
Betaprodine	5.0
Benzitramide	5.0
4-Bromo-2,5-dimethoxyamphetamine	0.5
Bufotenine	2.0
Cannabinoids	2.0
Cannabis	100.0
Cannabis resin	20.0

SCHEDULE VI—continued

Column 1 Name of substance	Column 2 Trafficable quantity
	Grams
Chlorphentermine	2.0
Clonitazene	5.0
Cocaine	2.0
Codeine	10.0
Codeine-N-oxide	10.0
Codoxime	10.0
Desomorphine	2.0
Diampromide	5.0
Diethylpropion	5.0
Diethylthiambutene	5.0
N,N-Diethyltryptamine	2.0
Dihydrocodeine	10.0
Dihydromorphine	10.0
Dimenoxadol	10.0
Dimepheptanol	10.0
2,5-Dimethoxy-4-methylamphetamine	2.0
Dimethylthiambutene	20.0
N,N-Dimethyltryptamine	2.0
Dioxaphetyl butyrate	2.0
Diphenoxylate	2.0
Dipipanone	10.0
Ecgonine	10.0
Ethylmethylthiambutene	2.0
Ethylmorphine	5.0
Etonitazene	5.0
Etorphine	5.0
Etoperidine	5.0
Fentanyl	0.005
Furethidine	1.0
Harmaline	2.0
Harmine	2.0
Heroin	2.0
Hydrocodone	2.0
Hydromorphanol	2.0
Hydromorphone	2.0
Hydroxyamphetamine	2.0
Hydroxypethidine	5.0
Ketobemidone	2.0
Levorphanol	1.0
Lysergamide	0.1
Lysergic acid	0.002
Lysergide	0.002
Mescaline	7.5
Metazocine	7.0
Methadone	2.0
Methaqualone	50.0
Methorphan	2.0
Methylamphetamine	2.0
3,4-Methylenedioxyamphetamine	0.5
Methyl-desorphine	2.0
Methyldihydromorphine	2.0
Methylphenidate	2.0
Metopon	2.0
Monoacetylmorphines	2.0
Moramide	2.0
Morpheridine	2.0
Morphine	2.0
Morphine-N-oxide	2.0

SCHEDULE VI—continued

Column 1 Name of substance	Column 2 Trafficable quantity
	Grams
Myrophine	20.0
Nicocodine	2.0
Nicodicodine	2.0
Nicomorphine	2.0
Noracymethadol	2.0
Norcodeine	2.0
Norlevorphanol	2.0
Normethadone	5.0
Normorphine	20.0
Norpipanone	10.0
Opium	20.0
Oxycodone	5.0
Oxymorphone	2.0
Pentazocine	20.0
Pethidine	10.0
Phenadoxone	10.0
Phenampromide	10.0
Phenazocine	1.0
Phendimetrazine	5.0
Phenmetrazine	5.0
Phenomorphan	5.0
Phenoperidine	1.0
Pholcodine	5.0
Piminodine	10.0
Pipradrol	1.0
Piritramide	1.0
Proheptazine	1.0
Properidine	25.0
Psilocin	0.1
Psilocybin	0.1
Tetrahydrocannabinols	2.0
Thebacon	2.0
Thebaine	2.0
Trimeperidine	10.0

Added by No. 41,
1976, s. 6

SCHEDULE VII

Section 154

PART I

ANNEX I TO THE CONVENTION

DEFINITION OF VALUE

ARTICLE I

(1) For the purposes of levying ad valorem duties of customs, the value of any goods imported for home use shall be taken to be the normal price, that is to say, the price which they would fetch at the time when the duty becomes payable on a sale in the open market between a buyer and a seller independent of each other.

(2) The normal price of any imported goods shall be determined on the following assumptions:

- (a) that the goods are delivered to the buyer at the port or place of introduction into the country of importation;
- (b) that the seller bears all costs, charges and expenses incidental to the sale and to the delivery of the goods at the port or place of introduction, which are hence included in the normal price;

SCHEDULE VII—continued

- (c) that the buyer bears any duties or taxes applicable in the country of importation, which are hence not included in the normal price.

ARTICLE II

(1) A sale in the open market between a buyer and a seller independent of each other pre-supposes:

- (a) that the price is the sole consideration;
- (b) that the price is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him and the buyer or any person associated in business with him, other than the relationship created by the sale itself;
- (c) that no part of the proceeds of any subsequent resale, other disposal or use of the goods will accrue, either directly or indirectly, to the seller or any person associated in business with him.

(2) Two persons shall be deemed to be associated in business with one another if, whether directly or indirectly, either of them has any interest in the business or property of the other or both have a common interest in any business or property or some third person has an interest in the business or property of both of them.

ARTICLE III

When the goods to be valued:

- (a) are manufactured in accordance with any patented invention or are goods to which any protected design has been applied; or
- (b) are imported under a foreign trade mark; or
- (c) are imported for sale, other disposal or use under a foreign trade mark.

the normal price shall be determined on the assumption that it includes the value of the right to use the patent, design or trade mark in respect of the goods.

PART II

ANNEX II TO THE CONVENTION

INTERPRETATIVE NOTES
TO THE DEFINITION OF VALUE

Addendum to Article I

NOTE 1

The time when the duty becomes payable, referred to in paragraph (1) of Article I shall be determined in accordance with the legislation of each country and may be, for example, the time at which the goods declaration for home use is duly lodged or registered, the time of payment of customs duty or the time of release of the goods.

NOTE 2

The "costs, charges and expenses" mentioned in Article I, paragraph (2) (b) include, inter alia, any of the following:

- carriage and freight;
- insurance;
- commission;
- brokerage;
- costs, charges and expenses of drawing up outside the country of importation documents incidental to the introduction of the goods into the country of importation, including consular fees;
- duties and taxes applicable outside the country of importation except those from which the goods have been exempted or have been or will be relieved by means of refund;
- cost of containers excluding those which are treated as separate articles for the purpose of levying duties of customs; cost of packing (whether for labour, materials or otherwise);
- loading charges.

SCHEDULE VII—continued

NOTE 3

The normal price shall be determined on the assumption that the sale is a sale of the quantity to be valued.

NOTE 4

Where the determination of the value or of the price paid or payable depends upon factors which are expressed in a currency other than that of the country of importation, the foreign currency shall be converted into the currency of the importing country at the official rate of exchange of that country.

NOTE 5

The object of the Definition of Value is to make it possible in all cases to calculate the duties payable on the basis of the price at which imported goods are freely available to any buyer on a sale in the open market at the port or place of introduction into the country of importation. It is a concept for general use and is applicable whether or not the goods are in fact imported under a contract of sale, and whatever the terms of that contract.

But the application of the Definition implies an enquiry into current prices at the time of valuation. In practice, when imported goods are the subject of a *bona fide* sale, the price paid or payable on that sale can generally be considered as a valid indication of the normal price mentioned in the Definition. This being so, the price paid or payable can reasonably be used as a basis for valuation, and Customs Administrations are recommended to accept it as the value of the goods in question, subject:

- (a) to proper safeguards aimed at preventing evasion of duty by means of fictitious or colourable contracts or prices; and
- (b) to such adjustments of that price as may be considered necessary on account of circumstances of the sale which differ from those envisaged in the Definition of Value.

Adjustment under paragraph (b) above may in particular be required with reference to freight and other expenses dealt with in paragraph (2) of Article I and Note 2 of the Addendum to Article I, or with reference to discounts or other reductions in price granted in favour of sole agents or sole concessionaires, or to any abnormal discount or any other reduction from the ordinary competitive price.

Addendum to Article III

NOTE 1

The provisions of Article III do not restrict the provisions of Articles I and II.

NOTE 2

The provisions of Article III may also be applied to goods imported for sale, other disposal or use, after further manufacture, under a foreign trade mark.

NOTE 3

A trade mark shall be treated as a foreign trade mark if it is the mark of:

- (a) any person by whom the goods to be valued have been grown, produced, manufactured, offered for sale or otherwise dealt with outside the country of importation; or
- (b) any person associated in business with any person referred to in (a) above; or
- (c) any person whose rights in the mark are restricted by an agreement with any person referred to in (a) or (b) above.

General addendum

It is recommended that the concept of value expressed by the Definition and these Interpretative Notes be employed for the valuing of all goods subject to customs declaration, including duty-free goods and goods liable to specific customs duties.

SCHEDULE VIII

Section 4 Added by No. 92,
1979, s. 6

Column 1 Name of substance	Column 2 Commercial quantity
	Kilograms
Cannabis	100.0
Cannabis Resin	50.0
Cocaine	2.0
Heroin	1.5
Lysergic Acid	0.002
Lysergide	0.002
Morphine	1.5
Opium	20.0
Tetrahydrocannabinols	5.0

NOTES

1. The *Customs Act 1901* (a) as shown in this reprint comprises Act No. 6, 1901 as amended by the other Acts specified in the following table:

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Customs Act 1901</i>	6, 1901	3 Oct 1901	4 Oct 1901 (<i>see Gazette</i> 1901, p. 165)	—
<i>Spirits Act 1906</i>	21, 1906	12 Oct 1906	1 Jan 1907 (<i>see Gazette</i> 1907, p. 1)	—
<i>Customs (Inter-State Accounts) Act 1910</i>	9, 1910	7 Sept 1910	7 Sept 1910	—
<i>Customs Act 1910</i>	36, 1910	1 Dec 1910	1 Dec 1910	—
<i>Customs Act 1914</i>	19, 1914	7 Dec 1914	7 Dec 1914	—
<i>Customs Act 1916</i>	10, 1916	30 May 1916	30 May 1916	—
<i>Customs Act 1920</i>	41, 1920	10 Nov 1920	(b)	—
<i>Customs Act 1922</i>	19, 1922	9 Oct 1922	9 Oct 1922	—
<i>Customs Act 1923</i>	12, 1923	17 Aug 1923	17 Aug 1923	—
<i>Customs Act 1925</i>	22, 1925	26 Sept 1925	26 Sept 1925	—
<i>Customs Act 1930</i>	6, 1930	29 Mar 1930	29 Mar 1930	S. 3
<i>Customs Act 1934</i>	7, 1934	24 July 1934	S. 17: 1 Jan 1935 Remainder: Royal Assent	—
<i>Statute Law Revision Act 1934</i>	45, 1934	6 Aug 1934	6 Aug 1934	—
<i>Customs Act 1935</i>	7, 1935	5 Apr 1935	1 Jan 1935	—
<i>Customs Act 1936</i>	85, 1936	7 Dec 1936	7 Dec 1936	—
<i>Customs Act 1947</i>	54, 1947	13 Nov 1947	15 Nov 1947 (<i>see Gazette</i> 1947, p. 3377)	—
<i>Customs Act 1949</i>	45, 1949	27 Oct 1949	1 Apr 1950 (<i>see Gazette</i> 1950, p. 723)	S. 3 (2)
<i>Customs Act 1950</i>	56, 1950	14 Dec 1950	30 Nov 1950	—
<i>Statute Law Revision Act 1950</i>	80, 1950	16 Dec 1950	31 Dec 1950	Ss. 16 and 17
<i>Customs Act 1951</i>	56, 1951	11 Dec 1951	11 Dec 1951	S. 7
<i>Customs Act 1952</i>	108, 1952	19 Nov 1952	Ss. 7 and 11: 14 Dec 1956 (<i>see Gazette</i> 1956, p. 3889) Remainder: Royal Assent	Ss. 19 (2) and 20 (2)
<i>Customs Act 1953</i>	47, 1953	26 Oct 1953	23 Nov 1953	—
<i>Customs Act 1954</i>	66, 1954	8 Nov 1954	6 Dec 1954	—
<i>Customs Act 1957</i>	37, 1957	7 June 1957	S. 4: 7 Sept 1957 Remainder: Royal Assent	Ss. 9 (2) and 11 (2)

Customs Act 1901

NOTES—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Customs Act 1959</i>	54, 1959	22 May 1959	Ss. 6-8 and 17: 1 Jan 1960 Ss. 3, 4, 9-11, 13, 15, 20-24 and 29: 1 Sept 1960 (see <i>Gazette</i> 1960, p. 3065) Remainder: Royal Assent 5 Sept 1960	Ss. 5 (2) and 28-30
<i>Customs Act 1960</i>	42, 1960	5 Sept 1960	S. 3: 30 Nov 1961 (see <i>Gazette</i> 1961, p. 4309) Remainder: Royal Assent 1 July 1964 (see <i>Gazette</i> 1964, p. 2348)	—
<i>Customs Act (No. 2) 1960</i>	111, 1960	19 Dec 1960	Ss. 5, 20, 22, 31 and 32: 1 July 1964 (see <i>Gazette</i> 1964, p. 2348) Ss. 14 (1), 15 and 16: 1 Sept 1965 (see <i>Gazette</i> 1965, p. 3767) Remainder: Royal Assent 1 July 1965	Ss. 8 (2), 12 (2), 14 (2), 20 (2), 22 (2), 25 (2) and 29 (2)
<i>Customs Act 1963</i>	48, 1963	16 Oct 1963	12 Apr 1966 (see <i>Gazette</i> 1966, p. 1963) 14 Feb 1966 S. 3: 16 June 1966 (see <i>Gazette</i> 1966, p. 3185) Remainder: Royal Assent 30 May 1967	—
<i>Customs Act 1965</i>	29, 1965	2 June 1965	13 June 1968	—
<i>Customs Act (No. 2) 1965</i>	82, 1965	30 Nov 1965	Ss. 1, 2, 31 and 37: Royal Assent 18 June 1968 Remainder: 1 Oct 1969 (see <i>Gazette</i> 1969, p. 5771)	—
<i>Customs Act (No. 3) 1965</i>	133, 1965	18 Dec 1965	Ss. 1-3 and 5: Royal Assent 1 July 1974 (see <i>Gazette</i> 1974, No. 53D, p. 1)	—
<i>Customs Act 1966</i>	28, 1966	24 May 1966	13 Jan 1972 7 Dec 1973 31 Dec 1973	—
<i>Customs Act 1967</i>	54, 1967	30 May 1967	1 Aug 1974	—
<i>Customs Act 1968</i>	14, 1968	16 May 1968	3 Dec 1974	—
<i>Customs Act (No. 2) 1968</i>	104, 1968	2 Dec 1968	Ss. 4 and 38: 1 July 1975 (see s. 2 (1) and <i>Gazette</i> 1975, No. S122, p. 1) Remainder: Royal Assent 19 Aug 1975 (see s. 2)	S. 11
<i>Customs Act 1971</i>	12, 1971	5 Apr 1971	20 June 1975 (see s. 2)	S. 37
<i>Customs Act (No. 2) 1971</i>	134, 1971	16 Dec 1971	19 Aug 1975 (see s. 2)	—
<i>Customs Act 1973</i>	162, 1973	7 Dec 1973	19 Aug 1975 (see s. 2)	—
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	19 Aug 1975 (see s. 2)	—
<i>Customs Act 1974</i>	28, 1974	1 Aug 1974	19 Aug 1975 (see s. 2)	—
<i>Customs Act (No. 2) 1974</i>	120, 1974	3 Dec 1974	19 Aug 1975 (see s. 2)	—
<i>Postal and Telecommunications Commissions (Transitional Provisions) Act 1975</i>	56, 1975 as amended by	12 June 1975	19 Aug 1975 (see s. 2)	—
<i>Customs Act 1975</i>	107, 1975	9 Oct 1975	19 Aug 1975 (see s. 2)	—
<i>Customs Act (No. 2) 1975</i>	77, 1975	20 June 1975	19 Aug 1975 (see s. 2)	—
<i>Customs Act (No. 2) 1975</i>	107, 1975	9 Oct 1975	19 Aug 1975 (see s. 2)	—
<i>Customs Amendment Act 1976</i>	41, 1976	2 June 1976	1 July 1976	—
<i>Administrative Changes (Consequential Provisions) Act 1976</i>	91, 1976	20 Sept 1976	20 Sept 1976 (c)	—
<i>Customs Amendment Act (No. 2) 1976</i>	174, 1976	13 Dec 1976	S. 4: 1 Feb 1977 (see <i>Gazette</i> 1977, No. S8, p. 1) Remainder: Royal Assent 20 Oct 1978 (see <i>Gazette</i> 1978, No. S195, p. 1) S. 7: 24 Oct 1978 (see <i>Gazette</i> 1978, No. S219, p. 1) Remainder: Royal Assent	—
<i>Customs Amendment Act 1977</i>	154, 1977	10 Nov 1977	Ss. 3, 4 and 9: 20 Oct 1978 (see <i>Gazette</i> 1978, No. S195, p. 1) S. 7: 24 Oct 1978 (see <i>Gazette</i> 1978, No. S219, p. 1) Remainder: Royal Assent	Ss. 5 (2), 7 (2) and (3) and 13

NOTES—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	S. 8
<i>Customs Amendment Act 1978</i>	183, 1978	4 Dec 1978	S. 3: 10 July 1978 Remainder: Royal Assent	Ss. 4 and 5
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1979</i>	19, 1979	28 Mar 1979	Parts II-XVII (ss. 3-123): 15 May 1979 (see <i>Gazette</i> 1979, No. S86, p. 1) Remainder: Royal Assent	S. 124
<i>Customs Amendment Act 1979</i>	92, 1979	14 Sept 1979	Ss. 5 and 6: (see Note 4) Remainder: Royal Assent	Ss. 4 (2) and (3) and 17
<i>Customs Amendment Act (No. 2) 1979</i>	116, 1979	25 Oct 1979	1 June 1980 (see s. 2 and <i>Gazette</i> 1980, No. G21, p. 2)	—
<i>Australian Federal Police (Consequential Amendments) Act 1979</i>	155, 1979	28 Nov 1979	19 Oct 1979 (see s. 2 and <i>Gazette</i> 1979, No. S206, p. 1)	—
<i>Customs Amendment Act (No. 3) 1979</i>	177, 1979	4 Dec 1979	1 Nov 1979	—
<i>Customs Amendment Act (No. 4) 1979</i>	180, 1979	4 Dec 1979	4 Dec 1979	S. 14
<i>Customs Amendment Act (No. 2) 1980</i>	13, 1980	8 Apr 1980	1 Feb 1981 (see s. 2 and <i>Gazette</i> 1980, No. S282, p. 1)	Ss. 4 (2), 5 (2) and (3) and 7
<i>Customs Amendment Act 1980</i>	15, 1980	15 Apr 1980	16 Apr 1980	—
<i>Customs Amendment Act (No. 3) 1980</i>	110, 1980	6 June 1980	Ss. 3 (b), 4 and 5: 1 July 1980 (see <i>Gazette</i> 1980, No. S146, p. 1) Remainder: Royal Assent	Ss. 4 (2)-(4), 10 (2), 23 (2), 28 (3) and 32
<i>Customs Amendment Act (No. 4) 1980</i>	171, 1980	17 Dec 1980	1 Jan 1981	—
<i>Customs Amendment (Tenders) Act 1981</i>	45, 1981	14 May 1981	14 May 1981	—
<i>Statute Law Revision Act 1981</i>	61, 1981	12 June 1981	S. 115: Royal Assent (d)	—
<i>Customs Amendment Act 1981</i>	64, 1981	12 June 1981	Ss. 6-18, 19 (2), 20-24 and 27: (see Note 3) Remainder: 10 July 1981	Ss. 28 (2) and (3) and 38
<i>Customs Amendment (Securities) Act 1981</i>	67, 1981	12 June 1981	10 July 1981	S. 3 (2)

(a) This citation is provided for by the *Amendments Incorporation Act 1905* and the *Acts Citation Act 1976*.

(b) The *Customs Act 1920*, which was expressed to amend section 4 and to insert sections 157A to 157F, was to commence on a day to be fixed by Proclamation. A Proclamation fixing 11 November 1920 as the day of commencement was ineffective as it was published in the *Gazette* on 12 November 1920. The *Customs Act 1920* was later repealed by the *Customs Act 1923*.

(c) By virtue of sub-section 2 (7) of the *Administrative Changes (Consequential Provisions) Act 1976* the amendment made by that Act to the *Customs Act 1901* is deemed to have come into operation on 22 December 1975.

(d) The *Customs Act 1901* was amended by section 115 only of the *Statute Law Revision Act 1981*, section 2 of which provides that section 115 shall come into operation on Royal Assent.

2. S. 4 (1), definition of "Developing country"—Now cited as the *Customs Tariff Act 1966*.

3. Ss. 35A, 36, 37, 39, 40, 40B, 42, 59, 64, 70, 71, 71A, 71B, 72-74, 115, 130A, 132B, 184, 185 and 216—Sections 6-18, 19 (2), 20-24 and 27 of the *Customs Amendment Act 1981* are to commence on a date to be fixed by Proclamation. As at 31 July 1981, no date was fixed. The provisions are set out below under the heading "EXTRACTS FROM CUSTOMS AMENDMENT ACT 1981".

NOTES—continued

4. Ss. 196, 196A and 196B—Sections 5 and 6 of the *Customs Amendment Act 1979* are to commence on a date to be fixed by Proclamation. As at 31 July 1981, no date was fixed. The provisions are set out below under the heading "EXTRACT FROM CUSTOMS AMENDMENT ACT 1979".
5. S. 273B (1)—Now cited as the *Statutory Rules Publication Act 1903*.

EXTRACT FROM CUSTOMS AMENDMENT ACT 1979

Suspected persons—
detention and
search

5. Section 196 of the Principal Act is amended—

- (a) by omitting "If" and substituting "Subject to section 196B, if";
- (b) by omitting "The officer may detain" and substituting "An officer may detain";
- (c) by omitting "a Justice or" and substituting "a Magistrate or, if the search is not to involve an examination of the body cavities of the suspected person,"; and
- (d) by omitting "Justice" (second and third occurring) and substituting "Magistrate".

6. After section 196 of the Principal Act the following sections are inserted:

Orders for
searches of
suspected persons

"196A. (1) An order shall not be made by a Magistrate under section 196 for the searching of a suspected person unless the Magistrate is satisfied, by information on oath, that there is reasonable ground for suspecting that the person is unlawfully carrying, or has secreted about him, any goods subject to the control of the Customs, any prohibited imports or any prohibited exports.

"(2) An order of a Magistrate under section 196 for the searching of a suspected person shall be in accordance with the prescribed form.

Certain searches
to be carried out
only by medical
practitioners

"196B. (1) An officer of Customs or of police who is authorized by or under section 196 to search a suspected person shall not carry out a search by way of an examination of the body cavities of the person, but may, subject to sub-section (2), arrange for a medical practitioner to examine the body cavities of the person.

"(2) Where an officer of Customs or of police is authorized by an order of the Collector to search a suspected person, sub-section (1) does not authorize the officer of Customs or of police to arrange for a medical practitioner to examine the body cavities of that person.

"(3) Where a medical practitioner carries out an examination of the body cavities of a person in pursuance of arrangements made by an officer of Customs or of police under this section, proceedings do not lie against the medical practitioner in respect of anything reasonably done by him for the purpose of the examination.

"(4) A medical practitioner who carries out an examination of the body cavities of a person in pursuance of arrangements made by an officer of Customs or of

NOTES—continued

EXTRACT FROM CUSTOMS AMENDMENT ACT 1979—continued

police under this section may sign a certificate, in accordance with the prescribed form, setting out the results of the examination.

“(5) In any proceedings under this Act, a certificate by a medical practitioner under sub-section (4) is *prima facie* evidence of the matters stated in the certificate.

“(6) For the purposes of sub-section (5), a document purporting to be a certificate under sub-section (4) and to be signed by a medical practitioner shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

“(7) Where a medical practitioner furnishes to an officer of Customs or of police a certificate, signed by him, setting out the results of an examination carried out by him of the body cavities of a person, the officer of Customs or of police shall cause a copy of the certificate to be furnished to the person as soon as practicable after the certificate is furnished to him.

“(8) In this section, ‘medical practitioner’ means any person, whether male or female, registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.”.

EXTRACTS FROM CUSTOMS AMENDMENT ACT 1981

6. Section 35A of the Principal Act is amended by omitting from paragraph (1A) (a) “by authority of an entry passed under this Act or” and substituting “in accordance with authority given under section 39 or by authority”.

Persons having possession of dutiable goods to keep them safely

7. Section 36 of the Principal Act is amended by omitting “and passed”.

Entries

8. Section 37 of the Principal Act is amended by omitting from paragraph (2A) (a) “not passed” and substituting “authority under section 39 to deal with the goods has not been given”.

Entry of goods

9. Sections 39 and 40 of the Principal Act are repealed and the following sections are substituted:

“39. (1) Subject to this Act, where an entry in respect of goods has been made, the Customs may give authority in accordance with the regulations for those goods to be dealt with in accordance with that entry.

Authority to deal with goods

“(2) Authority under this section to deal with goods may be expressed to be subject to the condition that authority for the goods to be dealt with is given under the *Quarantine Act* 1908 or another law of the Commonwealth under which authority to deal with goods may be required, and, for the purposes of this Act, where authority under this section is expressed to be subject to such a condition, it shall be deemed not to have been given unless and until the authority, or each authority, referred to in the condition has been given.

“(3) Authority under this section to deal with goods in accordance with an entry may be suspended in accordance with the regulations at any time before the goods are dealt with in accordance with the entry.

NOTES—continued

EXTRACTS FROM CUSTOMS AMENDMENT ACT 1981—continued

Goods to be dealt
with according to
entry

"40. Where authority for goods to be dealt with in accordance with an entry has been given under section 39, the owner of the goods shall forthwith deal with the goods in accordance with the entry.

Penalty: \$250."

Production of
commercial
documents and
other
information

10. Section 40B of the Principal Act is amended—

- (a) by omitting from sub-section (1) "A Collector shall not pass an entry for home consumption or for warehousing in respect of goods" and substituting "Where goods have been entered for home consumption or warehousing, a Collector shall not give authority under section 39 for the goods to be dealt with in accordance with the entry"; and
- (b) by omitting sub-section (3) and substituting the following sub-section:

"(3) Where the owner of goods that have been entered for home consumption or for warehousing has been required to furnish documents or information under sub-section (2) in relation to the goods, a Collector shall not give authority under section 39 for the goods to be dealt with in accordance with the entry unless the requirement has been complied with or revoked."

Right to require
security

11. Section 42 of the Principal Act is amended by omitting from sub-section (1) "pass any entry relating thereto" and substituting "give any authority under section 39 to deal with the goods".

12. Section 59 of the Principal Act is repealed and the following section is substituted:

Ships and aircraft
to obey signals

"59. (1) The person in command of any ship in the service of the Commonwealth on which the prescribed ensign of the ship is flying may, by means of an international signal code or other internationally recognized means of communication between ships, request the master of—

- (a) any Australian ship; or
 - (b) any ship within 12 nautical miles of the coast of Australia,
- to bring his ship to for boarding for the purposes of this Act.

"(2) The person in command of any aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is or are displayed may, by means of an international signal code or other internationally recognized means of communication between an aircraft and a ship, request the master of—

- (a) any Australian ship; or
 - (b) any ship within 12 nautical miles of the coast of Australia,
- to bring his ship to for boarding for the purposes of this Act.

"(3) The master of a ship shall not, without reasonable excuse, refuse or fail to comply with a request made of him in pursuance of sub-section (1) or (2).

"(4) The person in command of any aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is or are displayed may, by means of an international signal code or other internationally recognized means of communication between aircraft, request the pilot of—

- (a) any Australian aircraft; or
 - (b) any aircraft flying over Australia or the waters within 12 nautical miles of the coast of Australia,
- to land his aircraft at the nearest airport for boarding for the purposes of this Act.

NOTES—continued

EXTRACTS FROM CUSTOMS AMENDMENT ACT 1981—continued

"(5) The pilot of an aircraft shall not, without reasonable excuse, refuse or fail to comply with a request made of him in pursuance of sub-section (4).

"(6) This section has effect subject to the obligations of Australia under international law, including obligations under any treaty or convention or any other agreement between Australia and another country or other countries.

"(7) In this section—

'Australian aircraft' has the same meaning as it has in the *Air Navigation Act* 1920;

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

Penalty: \$500."

13. Section 64 of the Principal Act is amended—

Report of cargo

(a) by omitting paragraph (a) and substituting the following paragraph:

"(a) the master or owner of the ship or the pilot or owner of the aircraft shall, within the prescribed time after the arrival of the ship at a port or the arrival of the aircraft at an airport, make a report of the ship or aircraft and of the cargo of the ship or aircraft in accordance with the regulations;" and

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

"(2) The time prescribed for the purposes of paragraph (a) of sub-section (1) may be a time prescribed in relation to all ships and aircraft, in relation to ships, in relation to aircraft, in relation to ships in a class of ships or in relation to aircraft in a class of aircraft."

14. Section 70 of the Principal Act is amended by omitting "on being passed by the Collector" and substituting "made in accordance with the regulations".

Sight entry
warrant for
examination

15. Section 71 of the Principal Act is repealed and the following section is substituted:

"71. Where goods have been included in a sight entry, a person shall not make an entry in respect of those goods as required by section 68 other than an entry that refers to that sight entry.

Complete entry
of goods after
sight entry

Penalty: \$250."

16. Section 71A of the Principal Act is amended by omitting from sub-section (1) "and passed".

Permission to
deliver prescribed
goods for home
consumption
without entry

17. Section 71B of the Principal Act is amended by omitting from sub-section (1) "and passed".

Permission to
deliver goods of
approved kind
for home
consumption
without entry

18. Section 72 of the Principal Act is repealed and the following section is substituted:

"72. (1) Where—

(a) imported goods are required to be entered; and

Failure to make
entries

NOTES—continued

EXTRACTS FROM CUSTOMS AMENDMENT ACT 1981—continued

- (b) an entry is not made in respect of the goods within such period commencing on the importation of the goods as is prescribed, or any further period allowed by a Collector,

a Collector may cause the goods to be removed to a warehouse or such other place of security as the Collector directs.

“(2) Where goods that have been, or may be, removed under sub-section (1) are live animals or are of a perishable or hazardous nature and a Collector considers it expedient to do so without delay, the Collector may sell the goods.

“(3) A Collector has a lien on goods for any expenses incurred by him in connection with their removal under sub-section (1) and for any warehouse rent or similar charges incurred in relation to the goods.

“(4) Where—

- (a) goods are removed under sub-section (1); and
(b) all things that are required to be done to enable authority to deal with the goods to be given under section 39, including the making of an entry in respect of the goods, are not done within such period commencing on the removal of the goods as is prescribed,

a Collector may sell those goods.

“(5) A period prescribed for the purposes of sub-section (1) or paragraph (b) of sub-section (4) may be a period prescribed in relation to all goods or in relation to goods in a class of goods.”

Breaking bulk

19. (1) * * * * *

(2) Section 73 of the Principal Act is amended by omitting “for which entry has been passed” and substituting “authority to deal with which has been given under section 39”.

Authority for unshipment

20. Section 74 of the Principal Act is amended by omitting “An entry passed” and substituting “Authority to deal with the goods given under section 39”.

Authority for exportation of goods to be given

21. Section 115 of the Principal Act is amended by omitting “the entry has been passed” and substituting “authority given under section 39 to deal with the goods in accordance with the entry has been produced to him.”

Entry not required for ship's or aircraft's stores

22. Section 130A of the Principal Act is amended by omitting “and passed”.

Declared period quotas—effect on rates of import duty

23. Section 132B of the Principal Act is amended by omitting from sub-sections (4) and (8) “the entry is passed” and substituting “authority to deal with the goods is given under section 39”.

24. Sections 184 and 185 of the Principal Act are repealed and the following sections are substituted:

Power to pursue ships and aircraft

“184. (1) Where the master of a ship refuses or fails to comply with a request under sub-section (1) or (2) of section 59 to bring the ship to for boarding, the person in command of any ship in the service of the Commonwealth on which the prescribed ensign of the ship is flying or of any aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is or are displayed

NOTES.—continued

EXTRACTS FROM CUSTOMS AMENDMENT ACT 1981—continued

may use his ship or aircraft to chase, and, after firing a gun as a signal, fire at or into, the first-mentioned ship in order to compel it to be brought to for boarding.

"(2) Where the pilot of an aircraft refuses or fails to comply with a request under sub-section (4) of section 59 to land the aircraft for boarding, the person in command of any aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is or are displayed may use his aircraft to chase, and, after firing a gun as a signal, fire at or into, the first-mentioned aircraft in order to compel it to be landed for boarding.

"185. (1) This section applies in relation to, and only in relation to, a ship that has been brought to, or an aircraft that has been landed, for boarding following a request under section 59.

Search, &c., of ships and aircraft near Australia

"(2) An officer may—

- (a) board and search the ship or aircraft;
- (b) search any goods found on the ship or aircraft;
- (c) require all persons found on the ship or aircraft to answer questions, and produce any documents in their possession, in relation to—
 - (i) the ship or aircraft, its voyage or flight and its cargo, stores, crew and passengers; or
 - (ii) the presence of those persons on the ship or aircraft; and
- (d) arrest without warrant any person found on the ship or aircraft who he believes on reasonable grounds has committed, is committing or attempting to commit, or is otherwise concerned in the commission of, an offence against this Act.

"(3) If an officer suspects on reasonable grounds that the ship or aircraft has been, is being, or is about to be, used or otherwise involved in the commission or attempted commission of an offence against this Act, he may detain it and bring it, or cause it to be brought, to such port or airport as he thinks fit.

"(4) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made by an officer under this section.

Penalty: \$1,000.

"(5) In this section, 'officer' includes any person who is in command, or a member of the crew, of the ship or aircraft from which the relevant request to bring to or land was made under section 59 or of any ship or aircraft that was used under section 184 to chase the ship or aircraft in relation to which this section applies.

"(6) In this section—

- (a) a reference to a person found on the ship or aircraft includes a reference to a person suspected on reasonable grounds by an officer of having landed from or left the ship or aircraft; and
- (b) a reference to goods found on the ship or aircraft includes a reference to goods suspected on reasonable grounds by an officer of having been removed from the ship or aircraft."

* * * * *

27. Section 216 of the Principal Act is amended by omitting "pass any entry relating thereto" and substituting "give an authority under section 39 to deal with the goods".

Collector may require further proof of proper entry

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