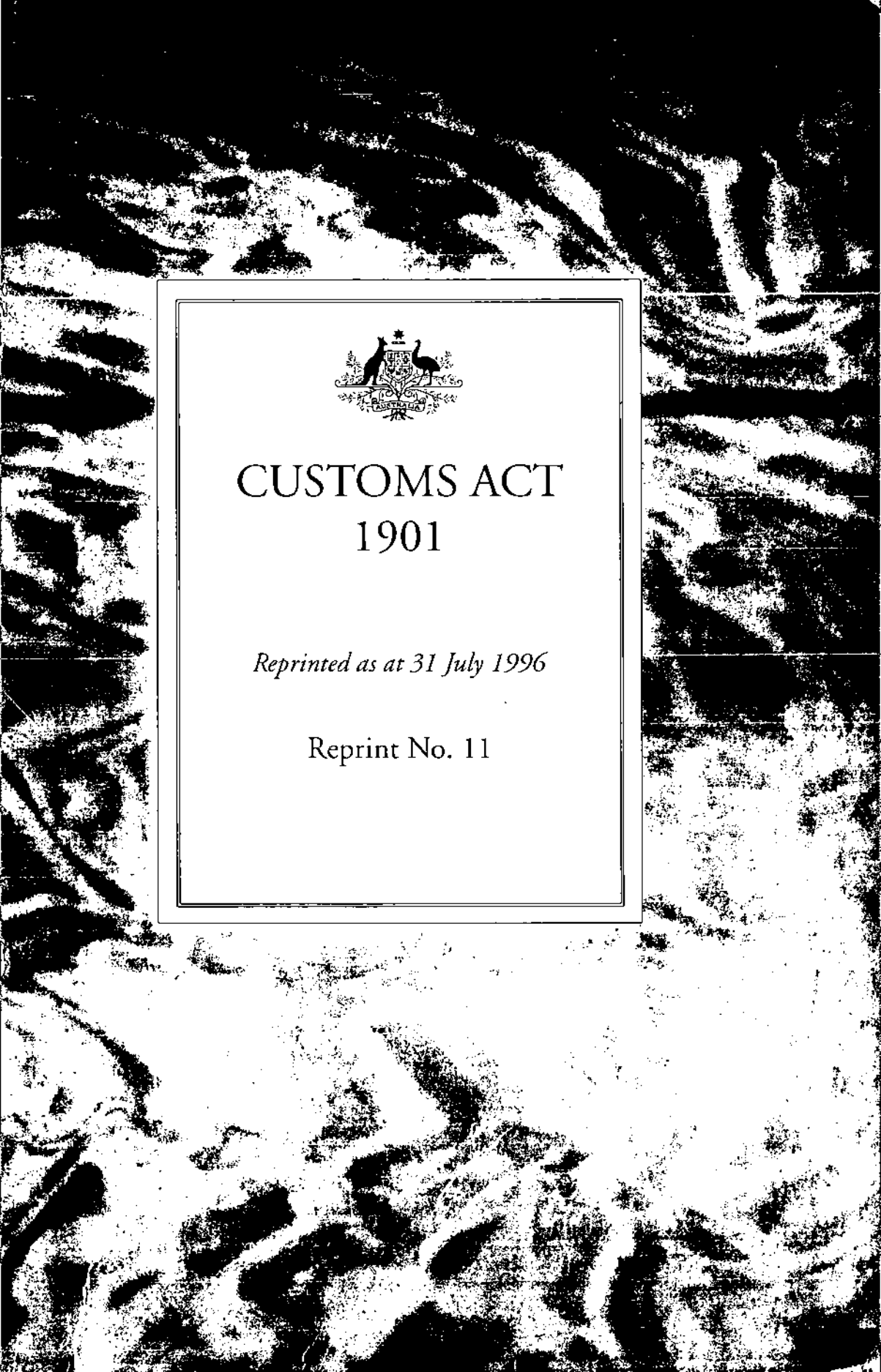

CUSTOMS ACT 1901

Reprinted as at 31 July 1996

Reprint No. 11

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AUSTRALIA

CUSTOMS ACT 1901

Reprinted as at 31 July 1996

Reprint No. 11

ATTORNEY GENERAL'S DEPARTMENT

AN AGPS PRESS PUBLICATION
AUSTRALIAN GOVERNMENT PUBLISHING SERVICE
CANBERRA

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ISBN 0 644 47202 2

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This consolidation has been prepared by the Attorney-General's Department.

Produced by the Australian Government Publishing Service

CUSTOMS ACT 1901

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CUSTOMS ACT 1901

An Act relating to the Customs

PART I—INTRODUCTORY

Short title

1. This Act may be cited as the *Customs Act 1901*.[1]

Commencement

2. This Act shall commence on a day to be fixed by Proclamation.[1]

Definitions

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

"Adjacent area" means an adjacent area in respect of a State, of the Northern Territory or of the Territory of the Ashmore and Cartier Islands, as determined in accordance with section 5 of the Sea Installations Act;

"Air Cargo Automation System" means the computer system established under subsection 67A (2);

"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;

"Airport shop goods" means:

(a) goods declared by the regulations to be airport shop goods for the purposes of section 96B; or

(b) goods included in a class of goods declared by the regulations to be a class of airport shop goods for the purposes of that section;

"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 an officer of Customs shall ask;

"Applicable EXIT agreement", in relation to a registered EXIT user, means the EXIT agreement in force in respect of that user;

"approved form" means a form approved under section 4A;

"AQIS" means the operating group within the Department of Primary Industries and Energy having responsibility in relation to the administration of the *Quarantine Act 1908*;

"Area A of the Zone of Cooperation" has the same meaning as in the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990*;

"Australia" does not include:

(a) the Territory of Christmas Island; or

(b) the Territory of Cocos (Keeling) Islands;

"Australian resources installation" means a resources installation that is deemed to be part of Australia because of the operation of section 5C;

"Australian seabed" means so much of the seabed adjacent to Australia (other than the seabed within Area A of the Zone of Cooperation) as is:

(a) within the area comprising:

(i) the areas described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967*; and

(ii) the Coral Sea area; and

(b) part of:

(i) the continental shelf of Australia;

(ii) the seabed beneath the territorial sea of Australia (including the territorial sea adjacent to any island forming part of Australia); or

(iii) the seabed beneath waters of the sea that are on the landward side of the territorial sea of Australia and are not within the limits of a State or Territory;

"Australian sea installation" means a sea installation that is deemed to be part of Australia because of the operation of section 5C;

"Australian waters" means:

(a) in relation to a resources installation—waters above the Australian seabed; and

(b) in relation to a sea installation—waters comprising all of the adjacent areas and the coastal area;

"authorised officer", in relation to a section of this Act, means an officer of Customs authorised in writing by the CEO to exercise the powers or perform the functions of an authorised officer under that section;

"Authority to deal" means:

(a) in relation to goods the subject of an export entry—an export entry advice, in the form specified under subsection 114C (1), authorising the goods to be dealt with in accordance with the entry; and

(b) in relation to goods the subject of an import entry—an authorisation of the kind referred to in subsection 71B (4);

"Beer" means any liquor on which, under the name of beer, any duty of Customs imposed by the Parliament is payable;

"Blending" means a mixing together of 2 or more substances in order to obtain a commercial product;

"Brought into physical contact" has the same meaning as in the Sea Installations Act;

"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;

"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;

"cargo automation system" means the Air Cargo Automation System or the Sea Cargo Automation System;

"Carriage" includes vehicles and conveyances of all kinds;

"Carry", for the purposes of Division 1B of Part XII, has the meaning given by subsection (19);

"CEO" means the Chief Executive Officer of Customs;

"Coastal area" means the area comprising the waters of:

(a) the territorial sea of Australia; and

(b) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or an internal Territory;

"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 but does not include a record of any transmission to or from Customs:

(a) under the COMPILE computer system in respect of an import entry concerning the goods or a withdrawal of such an entry; or

(b) under the EXIT computer system in respect of an export entry, submanifest, or outward manifest concerning the goods or a withdrawal of such an entry, submanifest or manifest;

"Commercial quantity" means:

(a) in relation to a narcotic substance that is named or described in column 1 of Schedule VI—the quantity, if any, that is specified in column 3 of that Schedule opposite to the name or description of the substance; and

(b) in relation to a narcotic substance that 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 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;

"Commonwealth authority" means an authority or body established for a purpose of the Commonwealth by or under a law of the Commonwealth (including an Ordinance of the Australian Capital Territory);

"COMPILE computer system" means the computer facilities specified in each COMPILE user agreement for all computer communications relating to the importation of goods;

"COMPILE user agreement" means an agreement entered into between Customs and a registered COMPILE user under subsection 77A (8);

"Container" means a container within the meaning of the Customs Convention on Containers, 1972 signed in Geneva on 2 December 1972, as affected by any amendment of the Convention that has come into force;

"Continental shelf" has the same meaning as in the *Seas and Submerged Lands Act 1973*;

"Coral Sea area" has the same meaning as in the *Petroleum (Submerged Lands) Act 1967*;

"Country" includes territory or other place, but does not include an Australian resources installation or an Australian sea installation;

"Customs" means the Australian Customs Service;

"Customs Acts" means this Act and any instruments (including rules, regulations or by-laws) made under this Act and any other Act, and any instruments (including rules, regulations or by-laws) made under any other Act, relating to customs in force within the Commonwealth or any part of the Commonwealth;

"Customs Tariff" means an Act imposing duties of customs, and includes such an Act that has not come into operation;

"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;

"Detention officer" means:

(a) for the purposes of Subdivision A of Division 1B of Part XII—an officer of Customs who is a detention officer because of a declaration under subsection 219ZA (1); or

(b) for the purposes of Subdivision B of that Division—an officer of Customs who is a detention officer because of a declaration under subsection 219ZA (2); or

(c) for the purposes of Subdivision C of that Division—an officer of Customs who is a detention officer because of a declaration under subsection 219ZA (3);

"Detention place" means:

(a) for the purposes of Subdivision B of Division 1B of Part XII—a place that is a detention place because of subsection 219ZB (1); and

(b) for the purposes of Subdivision C of that Division—a place that is a detention place because of subsection 219ZB (2);

"Division 1B Judge" means:

(a) a Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory, or of the Family Court of Australia, in relation to whom a consent under subsection 219RA (1) and a nomination under subsection 219RA (2) are in force; or

(b) a Judge of the Supreme Court of a State to whom an appropriate arrangement under subsection 11 (1) applies; or

(c) a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in paragraph (a) and to whom an appropriate arrangement under subsection 11 (2) applies;

"Division 1B Magistrate" means:

(a) a Magistrate of the Australian Capital Territory; or

(b) a Magistrate of a State to whom an appropriate arrangement under subsection 11 (1) applies; or

(c) a Magistrate of the Northern Territory to whom an appropriate arrangement under subsection 11 (2) applies;

"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;

"Environment related activity" has the same meaning as in the Sea Installations Act;

"EXIT agreement" means an agreement entered into between Customs and a registered EXIT user under subsection 122A (7);

"EXIT computer system" means the computer facilities specified in each EXIT agreement for all computer communications relating to the exportation of goods;

"Export entry" means a computer export entry or a documentary export entry within the meaning of section 114;

"Export entry advice" means a communication, in respect of an export entry, that is made in the manner, and has the form, specified in regulations made for the purpose of subsection 114C (1);

"External place" means:

(a) a Territory other than an internal Territory; or

(b) a foreign country;

"External search", in relation to a person, means a search of the body of, and of anything worn by or in the possession of, the person:

(a) to determine whether the person is carrying any prohibited goods; and

(b) to recover any such goods;

but does not include an internal examination of the person's body;

"Frisk search", in relation to a person, means:

(a) a quick search of the person by the rapid and methodical running of hands over the person's outer garments; and

(b) an examination of anything worn by the person that can be conveniently removed and is voluntarily removed by the person;

to:

(c) determine whether the person is carrying any prohibited goods; and

(d) recover any such goods;

"*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;

"Identifying code", in relation to a registered EXIT user, means the code allocated to the user under subsection 122A (8);

"Import entry" means a computer import entry or a documentary import entry within the meaning of section 71A;

"Import entry advice" means a communication, in respect of an import entry, that is made under subsection 71B (1);

"Indonesia" means the Republic of Indonesia;

"In need of protection" has the meaning given by subsection (20);

"Installation" means:

(a) a resources installation; or

(b) a sea installation;

"Internal search", in relation to a person, means an examination (including an internal examination) of the person's body to determine whether the person is internally concealing a substance or thing, and includes the recovery of any substance or thing suspected on reasonable grounds to be so concealed;

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

"Lawyer" means a person who has been admitted in a State or Territory to practise as a barrister, as a solicitor or as a barrister and solicitor and whose right so to practise is not suspended or has not been cancelled;

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

"Master" means:

(a) in relation to a ship (not being an installation)—the person in charge or command of the ship; and

(b) in relation to an installation—the person in charge of the installation;

but does not include a pilot or Government officer;

"Medical practitioner" means any person 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;

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

"Movement application" means an application made under section 71E for permission to move goods that are, or will be, subject to Customs control;

"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 that is named or described 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;

"Natural resources" means the mineral and other non-living resources of the seabed and its subsoil;

"Officer" means an officer of Customs;

"Officer of Customs" means a person:

(a) employed in the Customs; or

(b) authorised in writing by the CEO under this Act to perform all of the functions of an officer of Customs;

and includes:

(c) in relation to a provision of a Customs Act, a person authorised in writing by the CEO under this Act to perform the functions of an officer of Customs under that provision; or

(d) in relation to a power conferred by a provision of a Customs Act, a person authorised in writing by the CEO under this Act to perform the functions of an officer of Customs in relation to the exercise of that power;

"Overseas resources installation" means an off-shore installation that:

(a) is in Australian waters; and

(b) has been brought into Australian waters from a place outside the outer limits of Australian waters;

but does not include an Australian resources installation;

"Overseas sea installation" means a sea installation that:

(a) is in an adjacent area or a coastal area; and

(b) has been brought into the adjacent area or coastal area, as the case may be, from a place outside the outer limits of Australian waters;

but does not include an Australian sea installation;

"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 a charterer of the ship or aircraft or a slot charterer or freight forwarder responsible for the transportation of goods on the ship or aircraft;

"Package" includes every means by which goods for carriage may be cased covered enclosed contained or packed;

"Pallet" means a pallet within the meaning of the European Convention on Customs Treatment of Pallets used in International Transport signed in Geneva on 9 December 1960, as affected by any amendment of the Convention that has come into force;

"Permit", in relation to a sea installation, has the same meaning as in the Sea Installations Act;

"Pilot" means the person in charge or command of any aircraft;

"PIN number", in relation to a registered COMPILE user, means a personal user identification number allocated to the user under subsection 77A (9);

"Place" includes ship or aircraft;

"place outside Australia" includes:

(a) the waters in Area A of the Zone of Cooperation; or

(b) a resources installation in Area A;

but does not include:

(c) any other area of waters outside Australia; or

(d) any other installation outside Australia; or

(e) a ship outside Australia; or

(f) a reef or an uninhabited island outside Australia;

"Port" means a port appointed under section 15;

"port authority" means a body established by or under a law of a State or Territory to administer the business carried on at a port or ports in that State or Territory;

"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;

"Prohibited goods" means:

(a) goods whose importation or exportation is prohibited by this Act or any other law of the Commonwealth; or

(b) goods whose importation or exportation is subject to restrictions or conditions under this Act or any other law of the Commonwealth; or

(c) goods subject to the control of the Customs;

"Protected object" means an object in respect of which a notice under section 203T is in force;

"Records offence" means:

(a) an offence against subsection 240 (1) or (4) of this Act;

(b) an offence against:

(i) section 6, 7 or 7A of the *Crimes Act 1914*;

(ii) paragraph 86 (1) (a) of that Act; or

(iii) section 237 of this Act;

being an offence that relates to an offence of the kind referred to in paragraph (a) of this definition; or

(c) an offence against section 29D or 86A of the *Crimes Act 1914*, being an offence that relates to a tax liability;

"Registered COMPILE user" means a person registered as such a user under subsection 77A (5);

"Registered EXIT user" means a person registered as such a user under section 122A;

"Resources installation" means:

(a) a resources industry fixed structure within the meaning of subsection (5); or

(b) a resources industry mobile unit within the meaning of subsection (6);

"resources installation in Area A" means a resources installation that is attached to the seabed in Area A of the Zone of Cooperation;

"Sea Cargo Automation System" means the computer system established under subsection 67A (1);

"Sea installation" has the same meaning as in the Sea Installations Act;

"Sea Installations Act" means the *Sea Installations Act 1987*;

"Ship" means any vessel used in navigation, other than air navigation, and includes:

(a) an off-shore industry mobile unit; and

(b) 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;

"Suspicious substance" means a narcotic substance that would, or would be likely to, assist in the proof of the commission by any person of an offence against this Act that is punishable by imprisonment for a period of 7 years or more;

"The United Kingdom" includes the Channel Islands and the Isle of Man;

"This Act" includes all regulations made thereunder;

"Trafficable quantity", in relation to a narcotic substance, means:

(a) where the substance is named or described in column 1 of Schedule VI—the quantity that is specified in column 2 of that Schedule opposite to the name or description of that substance; and

(b) 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 trafficable quantity in relation to that substance;

"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, without limiting the generality of the foregoing, includes:

(a) animals;

(b) bones, hides, skins and other parts of animals obtained by killing, including such hides and skins that have been sun-dried;

(c) greasy wool;

(d) plants and parts of plants, including raw cotton, bark, fruit, nuts, grain, seeds in their natural state and unwrought logs;

(e) minerals in their natural state and ores; and

(f) crude petroleum;

"Visual examination application" means an application made under section 71C for permission to examine goods;

"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 71E; or

(b) goods blended or packaged 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.

(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.

(3A) A reference in this Act or any other law of the Commonwealth to the tariff classification under which goods are classified is a reference to the heading in Schedule 3 to the *Customs Tariff Act 1995* or such a heading's subheading:

(a) in whose third column a rate of duty or the quota sign within the meaning of that Act is set out; and

(b) under which the goods are classified for the purposes of that Act.

(3B) For the purposes of this Act and any other law of the Commonwealth:

(a) a heading in Schedule 3 to the *Customs Tariff Act 1995* may be referred to by the word "heading" followed by the digits with which the heading begins;

(b) a subheading of a heading in that Schedule may be referred to by the word "subheading" followed by the digits with which the subheading begins;

(c) an item in Schedule 4 to that Act may be referred to by the word "item" followed by the number, or the number and letter, with which the item begins;

(3C) Unless the contrary intention appears, if the word "Free" is set out in section 16 or 18 of the *Customs Tariff Act 1995* or in the third column of Schedule 3 or 4 to that Act, that word is taken to be a rate of duty for the purposes of this Act or any other law of the Commonwealth.

(3D) Unless the contrary intention appears, any words or words and figures, set out in the third column of Schedule 3 or 4 to the *Customs Tariff Act 1995*, that enable the duty to be worked out in respect of goods, are taken to be a rate of duty for the purposes of this Act or any other law of the Commonwealth.

(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.

(5) A reference in this Act to a resources industry fixed structure shall be read as a reference to a structure (including a pipeline) that:

(a) is not able to move or be moved as an entity from one place to another; and

(b) is used or is to be used off-shore in, or in any operations or activities associated with, or incidental to, exploring or exploiting natural resources.

(6) A reference in this Act to a resources industry mobile unit shall be read as a reference to:

(a) a vessel that is used or is to be used wholly or principally in:

(i) exploring or exploiting natural resources by drilling the seabed or its subsoil with equipment on or forming part of the vessel or by obtaining substantial quantities of material from the seabed or its subsoil with equipment of that kind; or

(ii) operations or activities associated with, or incidental to, activities of the kind referred to in subparagraph (i); or

(b) a structure (not being a vessel) that:

(i) is able to float or be floated;

(ii) is able to move or be moved as an entity from one place to another; and

(iii) is used or is to be used off-shore wholly or principally in:

(A) exploring or exploiting natural resources by drilling the seabed or its subsoil with equipment on or forming part of the structure or by obtaining substantial quantities of material from the seabed or its subsoil with equipment of that kind; or

(B) operations or activities associated with, or incidental to, activities of the kind referred to in sub-subparagraph (A).

(7) A vessel of a kind referred to in paragraph (6) (a) or a structure of a kind referred to in paragraph (6) (b) shall not be taken not to be a resources industry mobile unit by reason only that the vessel or structure is also used or to be used in, or in any operations or activities associated with, or incidental to, exploring or exploiting resources other than natural resources.

(8) The reference in subparagraph (6) (a) (ii) to a vessel that is used or is to be used wholly or principally in operations or activities associated with, or incidental to, activities of the kind referred to in subparagraph (6) (a) (i) shall be read as not including a reference to a vessel that is used or is to be used wholly or principally in:

(a) transporting persons or goods to or from a resources installation; or

(b) manoeuvring a resources installation, or in operations relating to the attachment of a resources installation to the Australian seabed.

(9) A resources installation shall be taken to be attached to the Australian seabed if:

(a) the installation:

(i) is in physical contact with, or is brought into physical contact with, a part of the Australian seabed; and

(ii) is used or is to be used, at that part of the Australian seabed, wholly or principally in or in any operations or activities associated with, or incidental to, exploring or exploiting natural resources; or

(b) the installation:

(i) is in physical contact with, or is brought into physical contact with, another resources installation that is taken to be attached to the Australian seabed by virtue of the operation of paragraph (a); and

(ii) is used or is to be used, at the place where it is brought into physical contact with the other installation, wholly or principally in or in any operations or activities associated with, or incidental to, exploring or exploiting natural resources.

(9A) Where it is necessary to determine whether a resources installation is attached to the seabed in Area A of the Zone of Cooperation, subsection (9) has effect as if a reference to the Australian seabed were a reference to the seabed in Area A.

(10) For the purposes of this Act, the space above or below a coastal area shall be deemed to be in that area.

(11) Subject to subsection (13), for the purposes of this Act, a sea installation shall be taken to be installed in an adjacent area if:

(a) the installation is in, or is brought into, physical contact with a part of the seabed in the adjacent area; or

(b) the installation is in, or is brought into, physical contact with another sea installation that is to be taken to be installed in the adjacent area because of paragraph (a).

(12) For the purposes of this Act, a sea installation shall be taken to be installed in an adjacent area at a particular time if the whole or part of the installation:

(a) is in that adjacent area at that time; and

(b) has been in a particular locality:

(i) that is circular and has a radius of 20 nautical miles; and

(ii) the whole or part of which is in that adjacent area;

for:

(iii) a continuous period, of at least 30 days, that immediately precedes that time; or

(iv) one or more periods, during the 60 days that immediately precede that time, that in sum amount to at least 40 days.

(13) Where a sea installation, being a ship or an aircraft:

(a) is brought into physical contact with a part of the seabed in an adjacent area; or

(b) is in, or is brought into, physical contact with another sea installation that is to be taken to be installed in an adjacent area;

for less than:

(c) in the case of a ship, or an aircraft, registered under the law of a foreign country—30 days; or

(d) in any other case—5 days;

it shall not be taken to be installed in that adjacent area under subsection (11).

(14) A sea installation shall not be taken to be installed in an adjacent area for the purposes of this Act unless it is to be taken to be so installed under this section.

(15) Subject to subsection (17), for the purposes of this Act, a sea installation shall be taken to be installed in a coastal area if:

(a) the installation is in, or is brought into, physical contact with a part of the seabed in the coastal area; or

(b) the installation is in, or is brought into, physical contact with another sea installation that is to be taken to be installed in the coastal area because of paragraph (a).

(16) For the purposes of this Act, a sea installation (other than an installation installed in an adjacent area) shall be taken to be installed in a coastal area at a particular time if the whole or part of the installation:

(a) is in that coastal area at that time; and

(b) has been in a particular locality:

(i) that is circular and has a radius of 20 nautical miles; and

(ii) the whole or part of which is in that coastal area;

for:

(iii) a continuous period, of at least 30 days, that immediately precedes that time; or

(iv) one or more periods, during the 60 days that immediately precede that time, that in sum amount to at least 40 days.

(17) Where a sea installation, being a ship or an aircraft:

(a) is brought into physical contact with a part of the seabed in a coastal area; or

(b) is in, or is brought into, physical contact with another sea installation that is to be taken to be installed in a coastal area;

for less than:

(c) in the case of a ship, or an aircraft, registered under the law of a foreign country—30 days; or

(d) in any other case—5 days;

it shall not be taken to be installed in that adjacent area under subsection (15).

(18) A sea installation shall not be taken to be installed in a coastal area for the purposes of this Act unless it is to be taken to be so installed under this section.

(19) A reference in Division 1B of Part XII to a person carrying prohibited goods includes a reference to a person having prohibited goods on his or her person.

(20) For the purposes of Division 1B of Part XII, a person is in need of protection if, and only if, the person is:

(a) under 17 years of age; or

(b) in a mental or physical condition (whether temporary or permanent) that makes the person incapable of managing his or her affairs.

Act not to apply so as to exceed Commonwealth power

4AA. (1) Unless the contrary intention appears, if a provision of this Act:

(a) would, apart from this section, have an invalid application; but

(b) also has at least one valid application;

it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.

(2) Despite subsection (1), the provision is not to have a particular valid application if:

(a) apart from this section, it is clear, taking into account the provision's context and the purpose or object underlying the Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth's legislative power; or

(b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth's legislative power.

(3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).

(4) This section applies to a provision of this Act, whether enacted before, at or after the commencement of this section.

(5) In this section:

"application" means an application in relation to:

(a) one or more particular persons, things, matters, places, circumstances or cases; or

(b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases;

"invalid application", in relation to a provision, means an application because of which the provision exceeds the Commonwealth's legislative power;

"valid application", in relation to a provision, means an application that, if it were the provision's only application, would be within the Commonwealth's legislative power.

Approved forms and approved statements

4A. (1) In this Act, a reference to an approved form is a reference to a form that is approved, by instrument in writing, by the CEO.

(1A) In this Act, a reference to an approved statement is a reference to a statement that is approved, by instrument in writing, by the CEO.

(2) The instrument by which a form or statement is approved under subsection (1) after this section commences is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Penalties at foot of sections or subsections

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 subsection of a section of this Act, but not at the foot of the section;

indicates that a contravention of the section or of the subsection, as the case may be, whether by act or omission, is an offence against this Act, punishable upon conviction by a penalty not exceeding the penalty so set out.

PART II—ADMINISTRATION

Attachment of overseas resources installations

5A. (1) A person shall not, without the permission of the CEO given under subsection (2), cause an overseas resources installation to be attached to the Australian seabed.

Penalty: $50,000.

(2) The CEO may, by notice in writing given to a person who has applied for permission to cause an overseas resources installation to be attached to the Australian seabed, give the person permission, subject to such conditions (if any) as are specified in the notice, to cause that installation to be so attached.

(3) A person who has been given permission under subsection (2) shall not refuse or fail to comply with any condition (including a condition imposed or varied under subsection (4)), to which that permission is subject.

Penalty: $10,000.

(4) Where the CEO has, under subsection (2), given a person permission to cause an overseas resources installation to be attached to the Australian seabed, the CEO may, at any time before that installation is so attached, by notice in writing served on the person:

(a) revoke the permission;

(b) revoke or vary a condition to which the permission is subject; or

(c) impose new conditions to which the permission is to be subject.

(5) Without limiting the generality of subsection (2), conditions to which a permission given under that subsection may be subject include:

(a) conditions relating to matters of quarantine; and

(b) conditions requiring the master of an installation to bring the installation to a place specified by the CEO for examination for quarantine purposes before the installation is attached to the Australian seabed.

Installation of overseas sea installations

5B. (1) A person shall not, without the permission of the CEO given under subsection (2), cause an overseas sea installation to be installed in a coastal area.

Penalty: $50,000.

(2) The CEO may, by notice in writing given to a person who has applied for permission to cause an overseas sea installation to be installed in a coastal area, give the person permission, subject to such conditions (if any) as are specified in the notice, to cause that installation to be so installed.

(3) A person who has been given permission under subsection (2) shall not refuse or fail to comply with any condition (including a condition imposed or varied under subsection (4)) to which that permission is subject.

Penalty: $10,000.

(4) Where the CEO has, under subsection (2), given a person permission to cause an overseas sea installation to be installed in a coastal area, the CEO may, at any time before that installation is so installed, by notice in writing served on the person:

(a) revoke the permission;

(b) revoke or vary a condition to which the permission is subject; or

(c) impose new conditions to which the permission is to be subject.

(5) Without limiting the generality of subsection (2), conditions to which a permission given under that subsection in relation to a sea installation may be subject include:

(a) conditions relating to matters of quarantine; and

(b) conditions requiring the owner of the installation, to bring the installation to a place specified by the CEO for examination for quarantine purposes before the installation is installed in a coastal area.

Certain installations to be part of Australia

5C. (1) For the purposes of the Customs Acts:

(a) a resources installation that becomes attached to, or that is, at the commencement of this subsection, attached to, the Australian seabed; or

(b) a sea installation that becomes installed in, or that is, at the commencement of this subsection, installed in, an adjacent area or a coastal area;

shall, subject to subsections (2) and (3), be deemed to be part of Australia.

(2) A resources installation that is deemed to be part of Australia because of the operation of this section shall, for the purposes of the Customs Acts, cease to be part of Australia if:

(a) the installation is detached from the Australian seabed, or from another resources installation attached to the Australian seabed, for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits); or

(b) after having been detached from the Australian seabed otherwise than for the purpose referred to in paragraph (a), the installation is moved for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits).

(3) A sea installation that is deemed to be part of Australia because of the operation of this section shall, for the purposes of the Customs Acts, cease to be part of Australia if:

(a) the installation is detached from its location for the purpose of being taken to a place that is not in an adjacent area or in a coastal area; or

(b) after having been detached from its location otherwise than for the purpose referred to in paragraph (a), the installation is moved for the purpose of being taken to a place that is not in an adjacent area or in a coastal area.

General administration of Act

7. The Chief Executive Officer of Customs has the general administration of this Act.

Collectors of Customs

8. (1) In this Act:

(a) a reference to the Collector, or to a Collector, is a reference to:

(i) the CEO; or

(ii) the Regional Director for a State or Territory; or

(iii) any officer doing duty in the matter in relation to which the expression is used; and

(b) a reference to the Regional Director, or to a Regional Director, for a State or Territory is a reference to the principal officer of Customs for that State or Territory.

(2) For the purposes of this Act, a State shall be taken to include:

(a) in the case of a State other than the State of Queensland—that part of Australian waters that is within the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* that refers to that State; and

(b) in the case of the State of Queensland—that part of Australian waters that is within:

(i) the area described in that Schedule to that Act that refers to the State of Queensland; or

(ii) the Coral Sea area.

(3) For the purposes of this Act, the Northern Territory shall be taken to include that part of Australian waters that is within:

(a) the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* that refers to the Northern Territory; or

(b) the area described in that Schedule to that Act that refers to the Territory of Ashmore and Cartier Islands.

Attachment of part of a State or Territory to adjoining State or Territory for administrative purposes

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

9. (1) The Minister may, by signed instrument, delegate to an officer of Customs all or any of the functions and powers of the Minister under the Customs Acts.

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

(3) Paragraph 34AB (c) of the *Acts Interpretation Act 1901* does not apply to a delegation under subsection (1).

(4) Despite subsection (1), the power of the Minister to delegate the Minister's powers and functions under the Customs Acts does not extend to a power or function conferred by subsection 269TG (1) or (2), 269TH (1) or (2), 269TJ (1), (2), (4), (5) or (6) or 269TK (1) or (2) of this Act or by subsection 8 (5), 9 (5), 10 (3B), 10 (5) or 11 (4) of the Anti-Dumping Act.

Arrangements with States and the Northern Territory

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

(aa) 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 Subdivision C of Division 1B 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 that Subdivision; and

(c) for the performance by all or any of the persons who are medical practitioners employed by that State of the functions of a medical practitioner under Division 1B of Part XII.

(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 that State of the functions of a Judge under Division 1A of Part XII; and

(aa) 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 Subdivision C of Division 1B 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 that Subdivision; and

(c) for the performance by all or any of the persons who are medical practitioners employed by that Territory of the functions of a medical practitioner under Division 1B of Part XII.

Customs Seal

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

(2) The design so determined shall include:

(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 CEO directs.

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

(5) The CEO, the Regional Director for a State and the Regional Director 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:

(a) in the case of the stamp in the custody of the CEO—the words "Australian Capital Territory";

(b) in the case of the stamp in the custody of a Regional Director for a State—the name of the State; and

(c) in the case of the stamp in the custody of the Regional Director 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.

Customs flag

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.

Appointment of ports etc.

15. **(1)** The CEO may, by notice published in the *Gazette*:

(a) appoint ports and fix the limits of those ports; and

(b) appoint airports and fix the limits of those airports.

(2) The CEO may, by notice published in the *Gazette*:

(a) appoint wharves and fix the limits of those wharves; and

(b) appoint boarding stations for the boarding of ships and aircraft by officers.

(3) A notice under subsection (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.

Appointment of sufferance wharfs etc.

17. The CEO may by *Gazette* notice:

(a) Appoint sufferance wharfs in any port.

(b) Appoint places for the examination of goods on landing.

Accommodation on wharfs and at airports

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 CEO may in writing declare to be requisite.

Penalty: $100.

Waterfront area control

20. (1) A person who is in a waterfront area must, at the request of a Customs officer, produce appropriate identification for the officer's inspection.

(2) If a person refuses or fails to produce appropriate identification to a Customs officer on request, the officer may, if he or she has reason to believe that the person is a member of the crew of an international ship, request the person to return to the ship forthwith to obtain that identification.

(3) If a member of the crew of an international ship refuses or fails to produce appropriate identification to a Customs officer, the master of the ship is taken, because of that refusal or failure, to have committed an offence against this Act.

Penalty: $1,000.

(4) In any proceedings for an offence against subsection (3), it is a defence if the master of the ship establishes that he or she has taken all reasonable steps to ensure that crew members:

(a) have appropriate identification; and

(b) understand their obligation to carry their identification in a waterfront area and to produce it to Customs officers when requested to do so.

(5) If:

(a) a person refuses or fails to produce appropriate identification to a Customs officer on request; and

(b) the officer has no reason to believe that the person is a member of an international ship's crew;

the officer may:

(c) if the person can otherwise establish his or her identity to the satisfaction of the officer and explain his or her presence in the waterfront area—issue the person with a temporary identification; or

(d) if the person is unable to establish his or her identity or to explain his or her presence in the waterfront area—request the person to leave the waterfront area forthwith.

(6) For the purposes of this section, a temporary identification issued under subsection (5) has effect, until that document expires, as if it were an appropriate identification.

(7) A person must not, without reasonable excuse, refuse or fail to comply with a request under subsection (2) or paragraph (5) (d).

Penalty: $500.

(8) In this section:

"appropriate identification" means:

(a) if a person is a member of the crew of an international ship:

(i) current passport; or

(ii) a document issued by the shipping company having control of the ship concerned setting out the full name and nationality of the person and the passport number or other official identification number of the person; or

(iii) a document issued by, or by an instrumentality of, the Commonwealth, a State or a Territory providing photographic identification of the person and setting out the person's full name, address, and date of birth; and

(b) if the person is not a member of the crew of such a ship—either:

(i) a document issued by the employer of the person providing photographic identification of the employee; or

(ii) a document issued by, or by an instrumentality of, the Commonwealth, a State or a Territory providing photographic identification of the person and setting out the person's full name, address, and date of birth;

"international ship" means a ship that is currently engaged in making international voyages;

"waterfront area" means an area:

(a) that is:

(i) a port or wharf that is appointed, and the limits of which are fixed, under section 15; or

(ii) a boarding station that is appointed under section 15; or

(iii) a place that is appointed under paragraph 17 (b); and

(b) that is signposted so as to give persons present in the area a clear indication:

(i) that it is an area under Customs control; and

(ii) that they must not enter, or remain in, the area unless they carry appropriate identification; and

(iii) that they may be required to produce appropriate identification and, if they fail to do so, that they may be requested to leave the area.

Persons before whom declarations may be made

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.

State inspection laws

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.

Working days and hours etc.

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.

(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 subsection (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 CEO determines, having regard to the cost of making officers available for the purposes of this section.

(3) Where:

(a) at the request of a person, a Collector arranges for the services of an officer to be made available for the purpose of:

(i) inspecting or examining any goods; or

(ii) supervising any operation in relation to any goods;

at a place other than a place at which such services are normally made available without charge; and

(b) a fee is not payable under subsection (2) in respect of the services of the officer being made available;

the person shall pay to the Customs such fee as the CEO determines, having regard to the cost of making the services of officers available for those purposes at places other than places at which such services are normally made available without charge.

PART III—CUSTOMS CONTROL EXAMINATION AND SECURITIES GENERALLY

Customs control of goods

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

(a) as to goods to which section 68 applies that are unshipped—from the time of their importation:

(i) until there has been compliance with a Collector's permit for their unshipment; and

(ii) if the goods are not examinable food that is entered under section 71A of this Act—until either they are delivered into home consumption in accordance with an authority to deal under section 71B or with a permission under section 69, 70 or 162A or they are exported to a place outside Australia, whichever happens first; and

(iii) if the goods are examinable food entered under section 71A for home consumption—until a food control certificate is delivered to the person having possession of the food; and

(iv) if the goods are examinable food entered under section 71A other than for home consumption—until there is delivered to the person having possession of the food an imported food inspection advice requiring its treatment, destruction or re-exportation or, if no such advice is delivered until the goods are entered into home consumption or exported to a place outside Australia, whichever happens first;

(aa) as to goods to which section 68 applies that are not unshipped—from the time of their importation until they are exported to a place outside Australia;

(ab) as to goods referred to in paragraph 68 (1) (e), (f) or (i)—from the time of their importation:

(i) if they are unshipped—until there has been compliance with a Collector's permit for their unshipment and until they are delivered into home consumption in accordance with an authority under subsection 71 (2); or

(ii) if they are not unshipped—until they are exported to a place outside Australia;

(ac) as to goods referred to in paragraph 68 (1) (g) or (h)—from the time of their importation:

(i) if they are unshipped—until there has been compliance with a Collector's permit for their unshipment; or

(ii) if they are not unshipped—until they are exported to a place outside Australia;

(ad) as to goods referred to in paragraph 68 (1) (d)—from the time of their importation until they are delivered into home consumption in accordance with an authority under subsection 71 (2) or they are exported to a place outside Australia, whichever happens first;

(b) as to all goods in respect of which a claim for drawback has been made before exportation of the goods to a place outside Australia—from the time the claim is made until the goods are exported, the claim is withdrawn or the claim is disallowed, whichever happens first;

(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 (including goods delivered for export under section 61AA of the *Excise Act 1901*), being protected objects, or being goods the exportation of which is subject to compliance with any condition or restriction under any Act or regulation—from the time the goods are made or prepared in, or are brought into, any prescribed place for export, until their exportation to a place outside Australia, or, in the case of goods delivered for export under section 61AA of the *Excise Act 1901*, their exportation to such a place or their return, in accordance with subsection 114D (2) of this Act, to Customs control under section 61 of the *Excise Act 1901*.

(2) In this section:

"examinable food" has the same meaning as in the *Imported Food Control Act 1992*;

"imported food inspection advice" has the same meaning as in the *Imported Food Control Act 1992*.

Exemptions under Torres Strait Treaty

30A. (1) In this section:

"area in the vicinity of the Protected Zone" means an area in respect of which a notice is in force under subsection (2);

"Australian place" means a place in Australia that is in the Protected Zone or in an area in the vicinity of the Protected Zone;

"Papua New Guinea place" means a place in Papua New Guinea that is in the Protected Zone or in an area in the vicinity of the Protected Zone;

"Protected Zone" means the zone established under Article 10 of the Torres Strait Treaty, being the area bounded by the line described in Annex 9 to that treaty;

"Protected Zone ship" means a ship that is owned or operated by a traditional inhabitant;

"Torres Strait Treaty" means the treaty between Australia and the Independent State of Papua New Guinea that was signed at Sydney on 18 December 1978;

"traditional activities" has the same meaning as in the Torres Strait Treaty;

"traditional inhabitants" has the same meaning as in the *Torres Strait Fisheries Act 1984*.

(2) The CEO may, by notice published in the *Gazette*, declare an area adjacent to the Protected Zone to be an area in the vicinity of the Protected Zone for the purposes of this section.

(3) The CEO may, by notice published in the *Gazette*, exempt, subject to such conditions (if any) as are specified in the notice, from so many of the provisions of the Customs Acts as are specified in the notice:

(a) any Protected Zone ship that arrives at an Australian place on a voyage from a Papua New Guinea place or that leaves an Australian place on a voyage to a Papua New Guinea place, being a ship:

(i) on board which there is at least one traditional inhabitant who is undertaking that voyage in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone; and

(ii) no person on board which is a person other than:

(A) a person referred to in subparagraph (i); or

(B) an employee of the Commonwealth, of Queensland or of Papua New Guinea or of an authority of the Commonwealth, of Queensland or of Papua New Guinea who is undertaking that voyage in connection with the performance of his duties;

(b) the entry into Australia, or the departure from Australia, of persons on board a ship of the kind referred to in paragraph (a); or

(c) the importation into Australia, or the exportation from Australia, of goods on board a ship of the kind referred to in paragraph (a), being goods that:

(i) are owned by, or are under the control of, a traditional inhabitant who is on board that ship and have been used, are being used or are intended to be used by him in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone;

(ii) are the personal belongings of a person referred to in subparagraph (a) (ii); or

(iii) are stores for the use of the passengers or crew of that ship or for the service of that ship.

(4) Where:

(a) the master of a ship (not being a ship to which an exemption under subsection (3) applies) or the pilot of an aircraft proposes to take that ship or aircraft, as the case may be, on a voyage or flight, as the case may be, from an Australian place to a Papua New Guinea place or from a Papua New Guinea place to an Australian place; and

(b) that voyage or flight, as the case may be:

(i) will be undertaken by at least one person who is a traditional inhabitant for purposes connected with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone; and

(ii) will not be undertaken by a person other than:

(A) a person referred to in subparagraph (i);

(B) an employee of the Commonwealth, of Queensland or of Papua New Guinea or of an authority of the Commonwealth, of Queensland or of Papua New Guinea who will be undertaking that voyage or flight in connection with the performance of his duties; or

(C) the master of the ship or a member of the crew of the ship or the pilot of the aircraft or a member of the crew of the aircraft, as the case may be;

the master of the ship or the pilot of the aircraft, as the case may be, may, by notice in writing given to the CEO setting out such information as is prescribed, request the CEO to grant an exemption under subsection (5) in relation to the voyage or flight, as the case may be.

(5) The CEO may, in his discretion, after receiving an application under subsection (4) in relation to a proposed voyage by a ship or a proposed flight by an aircraft, by notice in writing given to the person

who made the application, exempt, subject to such conditions (if any) as are specified in the notice, from so many of the provisions of the Customs Acts as are specified in the notice:

(a) the entry into Australia, or the departure from Australia, of that ship or aircraft, as the case may be, in the course of that voyage or flight, as the case may be;

(b) the entry into Australia, or the departure from Australia, of any person on board that ship or aircraft, as the case may be, in the course of that voyage or flight, as the case may be; and

(c) the importation into Australia, or the exportation from Australia, of goods, or goods included in a class of goods specified in the notice, on board that ship during that voyage or on board that aircraft during that flight, as the case may be, being goods that:

(i) are owned by, or are under the control of, a traditional inhabitant who is on board that ship or aircraft, as the case may be, and have been used, are being used or are intended to be used by him in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone;

(ii) are the personal belongings of a person who is on board that ship or aircraft, as the case may be, in the course of that voyage or flight, as the case may be; or

(iii) are stores for the use of the passengers or crew of that ship or aircraft, as the case may be, or for the service of that ship or aircraft, as the case may be.

(6) Where:

(a) under subsection (3) or (5), the arrival at a place in Australia of a ship, an aircraft or a person, or the importation into Australia of goods, is exempt from any provisions of the Customs Acts; and

(b) that ship, aircraft or person arrives at, or those goods are taken to, a place in Australia that is not in the Protected Zone or in an area in the vicinity of the Protected Zone;

the Customs Acts (including the provisions referred to in paragraph (a)) apply in relation to the arrival of that ship, aircraft or person at, or the taking of those goods to, the place referred to in paragraph (b) as if that ship, aircraft or person had arrived at the place, or those goods had been taken to that place, as the case may be, from a place outside Australia.

Goods on ships and aircraft subject to Customs control

31. All goods on board any ship or aircraft from a place outside Australia 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

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: $50,000.

(2) If a person who commits an offence against subsection (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 $50,000.

(3) It is a defence to a charge arising under subsection (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 subsection (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.

(5) A reference in this section to goods shall be read as not including a reference to installations.

Resources installations subject to the control of the Customs

33A. (1) Except with permission in force under subsection (2), a person shall not use an Australian resources installation that is subject to the control of the Customs in, or in any operations or activities associated with, or incidental to, exploring or exploiting the Australian seabed.

Penalty: $50,000.

(2) The CEO may give permission in writing to a person specified in the permission, subject to such conditions (if any) as are specified in the permission, to engage in specified activities in relation to the use of an Australian resources installation that is subject to the control of the Customs.

(3) A person who has been given permission under subsection (2) shall not refuse or fail to comply with any condition (including a condition imposed or varied under subsection (4)) to which that permission is subject.

Penalty: $10,000.

(4) Where the CEO has, under subsection (2), given a person permission to engage in any activities in relation to an Australian resources installation, the CEO may, while that installation remains subject to the control of Customs, by notice in writing served on the person:

(a) suspend or revoke the permission;

(b) revoke or vary a condition to which the permission is subject; or

(c) impose new conditions to which the permission is to be subject.

Sea installations subject to the control of the Customs

33B. (1) Except with permission in force under subsection (2), a person shall not use an Australian sea installation that is subject to the control of the Customs.

Penalty: $50,000.

(2) The CEO may give permission in writing to a person specified in the permission, subject to such conditions (if any) as are specified in the permission, to engage in specified activities in relation to the use of an Australian sea installation that is subject to the control of the Customs.

(3) A person who has been given permission under subsection (2) shall not refuse or fail to comply with any condition (including a condition imposed or varied under subsection (4)) to which that permission is subject.

Penalty: $10,000.

(4) Where the CEO has, under subsection (2), given a person permission to engage in any activities in relation to an Australian sea installation, the CEO may, while that installation remains subject to the control of the Customs, by notice in writing served on the person:

(a) suspend or revoke the permission;

(b) revoke or vary a condition to which the permission is subject; or

(c) impose new conditions to which the permission is to be subject.

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

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

Persons having possession of dutiable goods to keep them safely

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) Where:

(a) dutiable goods subject to the control of the Customs are, in accordance with authority given under section 71B or by authority of a permission given under section 71E, 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 71E, 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 subsection (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 the Collector.

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

(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.

Right to require security

42.[2] **(1)** 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 give any authority under section 71B to deal with the goods.

(1A) The right of the Customs under subsection (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*.

(1B) The right of the Customs under subsection (1) to require and take a security includes the right to require and take securities in respect of any interim duty that may be payable on goods under the *Customs Tariff (Anti-Dumping) Act 1975* but no such security shall be required or taken under this Act:

(a) on an application under section 269TB of this Act in respect of the goods to which the application relates before the time at which the CEO has made a preliminary finding under section 269TD that there are sufficient grounds for the publication by the Minister of a dumping duty notice or a countervailing duty notice within the meaning of Part XVB in respect of those goods; or

(b) on like goods imported into Australia before that time.

(1C) If:

(a) an undertaking is given and accepted under subsection 269TG (4) or 269TJ (3) in respect of goods; and

(b) the undertaking is subsequently breached;

the Customs may require and take securities in respect of any interim duty that may be payable under the *Customs Tariff (Anti-Dumping) Act 1975* on the goods or on like goods imported into Australia.

(1D) The right of the Customs under subsection (1) to require and take a security includes the right to require and take a security in respect of any interim duty that may be payable under the *Customs Tariff (Anti-Dumping) Act 1975* on goods the subject of an application under subsection 269ZE (1) of this Act.

(2) The right of the Customs under subsection (1) 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 subsection 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 subsection (1).

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

Form of security

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.

General bonds may be given

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

Cancellation of bonds

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 CEO.

(2) A security taken in respect of any interim duty that may become payable on goods under section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act 1975*, being a security taken before the publication by the Minister of a notice declaring that section to apply to those goods, shall be cancelled before the expiration of the prescribed period after the date the security is taken.

(3) In subsection (2), **"prescribed period"** means:

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

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

(4) Where:

(a) a notice is published by the Minister declaring section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act 1975* to apply to goods of a particular kind that may be imported into Australia;

(b) goods of that kind are imported while that notice is in force; and

(c) security is taken after the importation of those goods in relation to the interim duty that may be payable in respect of them;

subsection (2) does not apply in relation to that security.

New sureties

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.

Form of Customs security

47. The form of Customs security in Schedule I hereto shall suffice for all the purposes 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.

Effect 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.

(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

Importation

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

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 subsection (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 subsection (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 subsection (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 subsection (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 subsection (2), that period as extended, revoke that notice by serving, in accordance with subsection (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 subsection (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 subsection (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 subsection (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 subsection (1) in respect of a ship or aircraft;

(b) the Collector has complied with subsections (5) and (6) in relation to the notice;

(c) the notice has not been revoked under subsection (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 subsection (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 purpose 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.

(9) A reference in this section to a ship shall be read as not including a reference to an overseas resources installation or to an overseas sea installation.

Installations and goods deemed to be imported

49B. (1) Where:

(a) an overseas resources installation (not being an installation referred to in subsection (2)), becomes attached to the Australian seabed; or

(b) an overseas sea installation (not being an installation referred to in subsection (2)) becomes installed in an adjacent area or in a coastal area;

the installation and any goods on the installation at the time when it becomes so attached or so installed shall, for the purposes of the Customs Acts, be deemed to have been imported into Australia at the time when the installation becomes so attached or so installed.

(2) Where:

(a) an overseas resources installation is brought to a place in Australia and is to be taken from that place into Australian waters for the purposes of being attached to the Australian seabed; or

(b) an overseas sea installation is brought to a place in Australia and is to be taken from that place into an adjacent area or into a coastal area for the purposes of being installed in that area;

the installation and any goods on the installation at the time when it is brought to that place shall, for the purpose of the Customs Acts, be deemed to have been imported into Australia at the time when the installation is brought to that place.

Division 1—Prohibited Imports

Prohibition of the importation of goods

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

(2) The power conferred by the last preceding subsection may be exercised:

(a) by prohibiting the importation of goods absolutely;

(aa) by prohibiting the importation of goods in specified circumstances;

(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 (2) (c), 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 subsection (4) in respect of the failure.

(3A) Without limiting the generality of subparagraph (3) (b) (ii), a condition referred to in that subparagraph 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 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 subsection, 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 $10,000; or

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

Prohibited imports

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

(2) Notwithstanding the generality of subsection (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.

Division 2—The Boarding of Ships and Aircraft

Ships and aircraft to enter ports or airports

58. (1) The master of a ship or the pilot of any aircraft shall not, without the permission of a Collector given under subsection (2), suffer his ship or aircraft to enter any place other than a port or airport unless from stress of weather or other reasonable cause.

Penalty: $50,000.

(2) A Collector may, by notice in writing given to the master of a ship or the pilot of an aircraft who has applied for permission to bring his ship or aircraft to a place other than a port or airport, give the person permission, subject to such conditions (if any) as are specified in the notice, to bring the ship or aircraft to, or to remain at, that place.

(3) A person who has been given permission under subsection (2) shall not refuse or fail to comply with any condition (including a condition imposed or varied under subsection (4)) to which that permission is subject.

Penalty: $10,000.

(4) Where a Collector has, under subsection (2), given a person permission to bring a ship or aircraft to a place other than a port or airport, the Collector may, at any time before that ship or aircraft is brought to that place, by notice in writing served on the person:

(a) revoke the permission;

(b) revoke or vary a condition to which the permission is subject; or

(c) impose new conditions to which the permission is to be subject.

(5) Conditions to which a permission under subsection (2) may be subject include conditions relating to matters occurring while the ship or aircraft is at the place to which the permission relates.

(6) A reference in this section to a ship or aircraft entering, or being brought to, a place other than a port or airport shall be read as including a reference to the ship or aircraft being brought to a ship that is at an Australian resources installation or an Australian sea installation.

Direct journeys between sea installations and external places prohibited

58A. (1) For the purposes of this section, sea installations shall be deemed not to be a part of Australia.

(2) Subject to subsection (6), where a person:

(a) travels from an external place to a sea installation installed in an adjacent area in respect of a State, of the Northern Territory or of the Territory of Ashmore and Cartier Islands or in a coastal area (whether or not in the course of a longer journey); and

(b) has not been available for questioning in Australia for the purposes of this Act after leaving the place and before arriving at the installation;

then:

(c) that person;

(d) the holder of the permit for the installation or, if there is no such holder, the owner of the installation; and

(e) the owner and person in charge of a ship or aircraft on which the person travelled from the place to the installation;

are each guilty of an offence against this section.

(3) Subject to subsection (6), where goods:

(a) are brought from an external place to a sea installation installed in an adjacent area in respect of a State, of the Northern Territory or of the Territory of Ashmore and Cartier Islands or in a coastal area (whether or not previously brought to that place from another place); and

(b) have not been available for examination in Australia for the purposes of this Act after leaving the place and before arriving at the installation;

then:

(c) the owner of the goods at the time of their arrival at the installation;

(d) the holder of the permit for the installation or, if there is no such holder, the owner of the installation; and

(e) the owner and person in charge of a ship or aircraft on which the goods were transported from the place to the installation;

are each guilty of an offence against this section.

(4) Subject to subsection (6), where a person:

(a) travels from a sea installation installed in an adjacent area in respect of a State, of the Northern Territory or of the Territory of Ashmore and Cartier Islands or in a coastal area to an external place (whether or not in the course of a longer journey); and

(b) has not been available for questioning in Australia for the purposes of this Act after leaving the installation and before arriving in the place;

then:

(c) that person;

(d) the holder of the permit for the installation or, if there is no such holder, the owner of the installation; and

(e) the owner and person in charge of a ship or aircraft on which the person travelled from the installation to the place;

are each guilty of an offence against this section.

(5) Subject to subsection (6), where goods:

(a) are sent from a sea installation installed in an adjacent area in respect of a State, of the Northern Territory or of the Territory of Ashmore and Cartier Islands or in a coastal area to an external place (whether or not the goods are sent on from that place); and

(b) have not been available for examination in Australia for the purposes of this Act after leaving the installation and before arriving in the place;

then:

(c) the person who sent the goods;

(d) the holder of the permit for the installation or, if there is no such holder, the owner of the installation; and

(e) the owner and person in charge of a ship or aircraft on which the goods were transported from the installation to the place;

are each guilty of an offence against this section.

(6) It is a defence to a charge of an offence against this section if it is established that the journey because of which the offence would have been committed:

(a) was necessary to secure the safety of, or appeared to be the only way of averting a threat to, human life;

(b) was necessary to secure, or appeared to be the only way of averting a threat to, the safety of a ship at sea, of an aircraft in flight or of a sea installation; or

(c) was authorised in writing, by the CEO, and was carried out in accordance with the conditions (if any) specified in that authorisation.

(7) Subsection (6) shall not be taken to limit by implication any defence that would, but for the subsection, be available to a person charged with an offence against this section.

(8) For the purposes of this section:

(a) a person shall not be taken to travel from or to an external place or a sea installation because only of having been in an aircraft flying over, or on a landing place in, the place or installation; and

(b) goods shall not be taken to have been brought from, or sent to, an external place or a sea installation because only of being in an aircraft flying over, or on a landing place in, the place or installation.

Penalty: $10,000.

Direct journeys between certain resources installations and external places prohibited

58B. (1) In this section:

"external place" does not include Indonesia.

(2) Subject to subsection (6), where a person travels from an external place to a resources installation in Area A (whether or not in the course of a longer journey) without entering either Australia or Indonesia:

(a) that person; and

(b) the owner of the installation; and

(c) the owner and person in charge of the ship or aircraft on which the person arrives at the installation;

are each guilty of an offence against this section.

(3) Subject to subsection (6), where goods are taken from an external place to a resources installation in Area A (whether or not previously brought to that place from another place) without being taken into either Australia or Indonesia:

(a) the owner of the goods at the time of their arrival at the installation; and

(b) the owner of the installation; and

(c) the owner and person in charge of the ship or aircraft on which the goods arrive at the installation;

are each guilty of an offence against this section.

(4) Subject to subsection (6), where a person travels from a resources installation in Area A to an external place (whether or not in the course of a longer journey) without entering either Australia or Indonesia:

(a) that person; and

(b) the owner of the installation; and

(c) the owner and person in charge of the ship or aircraft on which the person left the installation;

are each guilty of an offence against this section.

(5) Subject to subsection (6), where goods are sent from a resources installation in Area A to an external place (whether or not the goods are sent on from that place) without being taken into Australia or Indonesia:

(a) the person who sends the goods; and

(b) the owner of the installation; and

(c) the owner and person in charge of the ship or aircraft on which the goods leave the installation;

are each guilty of an offence against this section.

(6) It is a defence to a prosecution for an offence against this section that the journey because of which the offence would have been committed:

(a) was necessary to secure the safety of, or appeared to be the only way of averting a threat to, human life; or

(b) was necessary to secure, or appeared to be the only way of averting a threat to, the safety of a ship at sea, of an aircraft in flight or of a resources installation; or

(c) was authorised in writing by the CEO and was carried out in accordance with the conditions (if any) specified in the authorisation.

(7) Subsection (6) is not to be taken to limit by implication any defence that would, apart from that subsection, be available to a person charged with an offence against this section.

(8) For the purposes of this section:

(a) a person is not to be taken to travel from or to an external place or an installation only because the person is in an aircraft flying over, or on a landing place in or on, the place or installation; and

(b) goods are not to be taken to have been brought from, or sent to, an external place or an installation only because the goods were in an aircraft that flew over, or was on a landing place in or on, the place or installation.

(9) A person who commits an offence against this section is punishable, on conviction, by a fine not exceeding $10,000.

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 base line of the territorial sea of Australia, within 12 nautical miles of the coast of an island forming part of Australia or within 500 metres of an Australian resources installation or an Australian sea installation;

to permit his ship to be boarded 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 base line of the territorial sea of Australia, within 12 nautical miles of the coast of an island forming part of Australia or within 500 metres of an Australian resources installation or an Australian sea installation;

to permit his ship to be boarded 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 subsection (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:

(i) Australia;

(ii) the waters within 12 nautical miles of the base line of the territorial sea of Australia;

(iia) the waters within 12 nautical miles of the coast of an island forming part of Australia; or

(iii) the waters within 500 metres of an Australian resources installation or an Australian sea installation;

to land his aircraft at the nearest airport for boarding for the purposes of this Act.

(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 subsection (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 *Civil Aviation Act 1988*;

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

Penalty: $50,000.

Boarding stations

60. (1) The master of every ship from a place outside Australia bound to or calling at any port shall bring his ship to for boarding at a boarding station appointed for that port and shall permit his ship to be boarded.

Penalty: $10,000.

(2) The pilot of an aircraft from a place outside Australia 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 CEO, 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 a place outside Australia.

Penalty: $10,000.

(3) The pilot of an aircraft engaged on an air service or flight between Australia and a place outside Australia:

(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 and shall permit the aircraft to be boarded.

Penalty: $10,000.

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

Facility for boarding

61. The master of any ship or the pilot of any aircraft permitting his ship or aircraft to be boarded, the master of a resources installation, or the owner of a sea installation, shall, by all reasonable means, facilitate the boarding of the ship, aircraft or installation by a person who is authorized under this Act to board that ship, aircraft or installation.

Penalty: $5,000.

Ships to come quickly to place of unlading

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 unlading, without touching at any other place, as quickly as it is practicable for him lawfully to do so.

Penalty: $5,000.

Ship or aircraft not to be moved without authority

63. No ship or aircraft after arrival at the proper place of mooring or unlading 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: $5,000.

Division 3—The Report of the Cargo

Impending arrival report

64. (1A) This section applies to a ship or aircraft on a voyage or flight to Australia from a place outside Australia.

(1) The master or owner of a ship to which this section applies that is due to arrive at a port in Australia (whether the first port or any subsequent port on the same voyage) must, in accordance with subsection (3) or (4), report its impending arrival to Customs:

(a) if the journey from the last port is likely to take not less than 48 hours—not later than 48 hours before its arrival; and

(b) if the journey from the last port is likely to take less than 48 hours—not later than 24 hours before its arrival.

Penalty: $500.

(2) The pilot or owner of an aircraft to which this section applies that is due to arrive at an airport in Australia (whether the first airport or any subsequent airport on the same flight) must, in accordance with subsection (3), report its impending arrival to Customs:

(a) if the journey from the last airport is likely to take not less than 3 hours—not later than 3 hours before its arrival; and

(b) if the journey from the last airport is likely to take less than 3 hours—not later than one hour before its arrival.

Penalty: $500.

(2A) A report under subsection (1) or (2) may be made by document, telephone call, facsimile or, in the case of a report under subsection (1) made by an owner of a ship who is a registered user in relation to the Sea Cargo Automation System, by computer.

(3) A report for the purposes of subsection (1) or (2) (other than a computer report for the purposes of subsection (1)) must:

(a) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport at which the ship or aircraft is expected to arrive; and

(b) identify the ship or aircraft concerned and the port or airport at which it is expected to arrive and state the expected time of its arrival at that port or airport.

(4) A computer report for the purposes of subsection (1) must:

(a) be transmitted to Customs using the Sea Cargo Automation System; and

(b) communicate such information as is set out in an approved statement; and

(c) be signed by transmitting the identifying code of the person making the report.

Arrival report

64AA. (1AA) This section applies to a ship or aircraft on a voyage or flight to Australia from a place outside Australia.

(1) The master or owner of a ship to which this section applies that has arrived at a port in Australia (whether the first port or any subsequent port on the same voyage) must, in accordance with subsection (2), report the ship's arrival to Customs together with particulars of the ship's stores, and of the personal effects of the crew, on board at the time of arrival:

(a) before the end of a period of 24 hours after the ship's arrival; or

(b) before the issue of a Certificate of Clearance in respect of the ship and the port;

whichever first happens.

Penalty: $500.

(1A) In calculating the period of 24 hours after the ship's arrival for the purposes of paragraph (1) (a), any time that falls on a Sunday or a holiday is to be disregarded.

(1B) The pilot or owner of an aircraft to which this section applies that has arrived at an airport in Australia (whether the first airport or any subsequent airport on the same flight) must, in accordance with subsection (2), report the aircraft's arrival to Customs together with particulars of the aircraft's stores, within the meaning of section 130C, on board at the time of arrival:

(a) before the end of a period of 3 hours after the aircraft's arrival; or

(b) before the issue of a Certificate of Clearance in respect of the aircraft and the airport;

whichever happens first.

Penalty: $500.

(2) A report for the purposes of subsection (1) or (1B) must:

(a) be in writing; and

(b) be in an approved form; and

(c) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport of arrival; and

(d) contain such information as is required by the form; and

(e) be signed in a manner specified in the form.

(3) In this section:

"ship's stores" means ship's stores within the meaning of section 130C.

Cargo report

64AB. (1) This section applies to a ship or aircraft on a voyage or flight to Australia from a place outside Australia.

(2) Before a Collector's permit is granted in respect of any goods, being cargo on board a ship to which this section applies that is due to arrive at a port in Australia (whether the first port or any subsequent port on the same voyage), the master or owner of the ship must communicate to Customs a report of the cargo that is intended to be unshipped at the port:

(a) if the journey from the last port is likely to take not less than 48 hours—not later than 48 hours before the ship's arrival at the port; and

(b) if the journey from the last port is likely to take less than 48 hours—not later than 24 hours before its arrival.

(3) Before a Collector's permit is granted in respect of any goods, being cargo on board an aircraft to which this section applies that is due to arrive at an airport in Australia, (whether the first airport or

any subsequent airport on the same journey), the pilot or owner of the aircraft must communicate to Customs a report of the cargo that is intended to be unshipped at the airport not later than:

(a) if that report is made by document—3 hours after the arrival of the aircraft at the airport; or

(b) if that report is made by computer—2 hours before the arrival of the aircraft at the airport.

(3A) A report under subsection (2) or (3) may be made by document or, in the case of a report by an owner of a ship or aircraft who is a registered user, by computer.

(4) A documentary report of the cargo intended to be unshipped from a ship or aircraft at a particular port or airport must:

(a) be communicated to Customs by sending or giving it to a prescribed officer; and

(b) be in the approved form for ship cargo or air cargo, as the case requires; and

(c) contain:

(i) the information required by the form; or

(ii) particulars of the person who is able to provide the information required by the form; and

(d) be signed in a manner specified in the form.

(5) A computer report of the cargo intended to be unshipped from a ship or aircraft must:

(a) be transmitted to Customs using a cargo automation system; and

(b) communicate such information as is set out in an approved statement; and

(c) be signed by transmitting the identifying code of the person making the report.

(6) Nothing in this section prevents the CEO from approving different approved forms and different approved statements for the cargo reports of different kinds of owner of a ship or aircraft.

Amendment of cargo reports

64ABA. (1) At any time after a cargo report is communicated to Customs but before the delivery of the goods into home consumption or warehousing covered by the report, the person who communicated the report to Customs may, by document or by computer, communicate a variation of the report to Customs.

(2) If a variation of a cargo report will result in a decrease in the quantity of any kind of goods previously covered by the report, the person communicating the variation must, as soon as practicable after so doing but not later than 90 days after so doing, also communicate to Customs an explanation of why the quantity of goods of that kind is so decreased.

(3) The variation and, if it is dealt with at a separate time, the explanation, must:

(a) if it is a variation of, or an explanation relating to, a documentary cargo report—be communicated to Customs, and be signed, as required for the original cargo report under subsection 64AB (4); and

(b) if it is a variation of, or an explanation relating to, a computer cargo report—be transmitted to Customs, and signed, as required for the original cargo report under subsection 64AB (5).

(4) A variation of a report is taken to have been communicated to Customs at the time when, in accordance with section 64AD, it would be taken to be so communicated if it constituted a complete cargo report and, with effect from that time, the original cargo report has effect as if it had been communicated incorporating the variations.

Passenger and crew report

64AC. (1) This section applies to a ship or aircraft on a voyage or flight to Australia from a place outside Australia.

(2) The master or owner of a ship to which this section applies that is due to arrive at a port in Australia (whether the first port or any subsequent port on the same voyage) must communicate to Customs, by document or computer, a report of all the crew and passengers who will be on board the ship at the time of its arrival at the port:

(a) if the journey from the last port is likely to take not less than 48 hours—not later than 48 hours before the ship's arrival at the port; and

(b) if the journey from the last port is likely to take less than 48 hours—not later than 24 hours before its arrival.

Penalty: $500.

(2A) The pilot or owner of an aircraft to which this section applies that is due to arrive at an airport in Australia (whether the first airport or any subsequent airport on the same flight) must communicate to Customs:

(a) by document—not later than 3 hours after the arrival of the aircraft at the airport; or

(b) by computer—not later than the time of arrival of the aircraft at the airport;

a report of the full name and date of birth of each crew member and the number of passengers who were or will be on board the aircraft at the time of its arrival at the airport.

Penalty: $500.

(3) A documentary passenger and crew report must:

(a) be communicated to Customs by sending or giving it to a prescribed officer; and

(b) be in an approved form; and

(c) contain the information required by the form; and

(d) be signed in a manner specified in the form.

(4) A computer passenger and crew report must:

(a) be transmitted to Customs using the prescribed computer system; and

(b) communicate such information as is set out in an approved statement; and

(c) be signed by transmitting such identifying information as is prescribed.

Communication of reports to Customs

64AD. (1) For the purposes of this Act, a documentary impending arrival report, an arrival report, a documentary cargo report or a documentary passenger and crew report may be sent to an officer referred to in subsection 64 (3), 64AA (2), 64AB (4) or 64AC (3), as the case requires, in any manner prescribed and, when so sent, is taken to have been communicated to Customs at such time and in such circumstances as are prescribed.

(2) For the purposes of this Act, a documentary impending arrival report, an arrival report, a documentary cargo report or a documentary passenger and crew report that is given to an officer referred to in subsection 64 (3), 64AA (2), 64AB (4) or 64AC (3), as the case requires, is taken to have been communicated to Customs when it is received by the officer.

(3) For the purposes of this Act, a computer impending arrival report, a computer cargo report or a computer passenger and crew report that is transmitted to Customs using a prescribed computer

system is taken to have been communicated to Customs when an acknowledgment of the report is transmitted to the person identified in the report as the person transmitting the report.

Obligation to answer questions and produce documents

64AE. (1) The master and owner of a ship to which section 64, 64AA, 64AB or 64AC applies must each:

(a) answer questions asked by a Collector relating to the ship or the ship's cargo, crew, passengers, stores or voyage; and

(b) at the request of a Collector, produce documents relating to the ship or the ship's cargo, crew, passengers, stores or voyage that are in his or her possession or control at the time of the request.

Penalty: $500.

(2) The pilot and owner of an aircraft to which section 64, 64AA, 64AB or 64AC applies must each:

(a) answer questions asked by a Collector relating to the aircraft or the aircraft's cargo, crew, passengers, stores or flight; and

(b) at the request of a Collector, produce documents relating to the aircraft or the aircraft's cargo, crew, passengers, stores or flight that are in his or her possession or control at the time of the request.

Penalty: $500.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the person charged had a reasonable excuse for:

(a) refusing or failing to answer questions asked by a Collector; or

(b) refusing or failing to produce documents when so requested by a Collector.

Ships or aircraft arriving at certain places

64A. (1) The master of a relevant ship or the pilot of a relevant aircraft shall, if required to do so by a Collector, make a report within such time as is specified by the Collector and in such form as is specified by the Collector, of the ship or aircraft and of the cargo of the ship or aircraft.

Penalty: $2,000.

(2) The master of a relevant ship or the pilot of a relevant aircraft shall, if required to do so by a Collector, answer questions relating to the ship or aircraft, to its cargo, crew, passengers or stores or to its voyage or flight.

Penalty: $1,000.

(3) The master of a relevant ship or the pilot of a relevant aircraft shall, if required to do so by a Collector, produce documents relating to the matters referred to in subsection (2).

Penalty: $1,000.

(4) In this section:

"relevant aircraft" means an aircraft that arrives from parts beyond the seas at a place other than an airport in pursuance of permission granted under section 58;

"relevant ship" means a ship that arrives from parts beyond the seas at a place other than a port in pursuance of permission granted under section 58.

Master or pilot of wrecked ship or aircraft to report

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: $5,000.

(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: $5,000.

Goods derelict to be delivered to officer

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: $2,000.

Interference with derelict goods

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

Penalty: $2,000.

Division 3A—The use of computers in sea and air cargo automation systems

Sea and air cargo automation systems

67A. **(1)** Customs must establish and maintain a computer system, to be known as the Sea Cargo Automation System, for purposes that include:

(a) the receipt and processing of reports relating to the impending arrival of ships or relating to their cargo; and

(b) the receipt and processing of variations of cargo reports referred to in paragraph (a); and

(c) the acknowledgment of such report or variations of such cargo reports; and

(d) the grant or refusal of permits to unship at a port goods covered by such cargo reports; and

(e) the grant or refusal of cargo clearance advices under section 74A in respect of all or a part of the goods covered by such cargo reports; and

(f) the receipt and processing of movement applications under section 71E.

(2) Customs must establish and maintain a computer system, to be known as the Air Cargo Automation System, for purposes that include:

(a) the receipt and processing of reports relating to an aircraft's cargo; and

(b) the receipt and processing of variations to cargo reports referred to in paragraph (a); and

(c) the acknowledgment by Customs of such reports or variations of such cargo reports; and

(d) the grant or refusal, by Customs, of cargo clearance advices under section 74A in respect of all or a part of the goods covered by such cargo reports; and

(e) the receipt and processing of movement applications under section 71E.

Computer access to Customs

67B. **(1)** A person cannot transmit information to Customs using either the Sea Cargo Automation System or the Air Cargo Automation System unless the person is a registered user in relation to that system.

(2) A person cannot obtain information from Customs using the Sea Cargo Automation System or the Air Cargo Automation System unless:

(a) the person is a registered user in relation to that system, is AQIS or, in relation to the Sea Cargo Automation System, is a port authority; and

(b) if the person is AQIS or is a port authority—the information is provided, and used, only in accordance with section 16 of the *Customs Administration Act 1985*.

(3) A person who becomes a registered user in relation to a cargo automation system will, according to the nature of the person's business, be permitted access to that system in accordance with this Act and with any user agreement entered into by the person.

(4) A registered user, in relation to the Sea Cargo Automation System, is permitted only such access to the system as is set out below:

(a) if the registered user is the owner of a ship:

(i) access to transmit reports relating to the impending arrival of the ship or relating to its cargo; and

(ii) access to transmit variations of reports relating to the cargo of the ship; and

(iii) access to discover whether a permit to unship has been granted, granted subject to conditions, or refused in respect of any goods covered by such a report; and

(iv) access to discover whether a cargo clearance advice has been granted or refused in respect of any goods covered by such a report;

(b) if the registered user is not the owner of a ship:

(i) access to discover whether a permit to unship has been granted, granted subject to conditions, or refused in respect of particular cargo; and

(ii) access to discover whether a cargo clearance advice has been granted or refused in respect of particular cargo.

(5) A registered user, in relation to the Air Cargo Automation System, is permitted only such access to the system as is set out below:

(a) if the registered user is the owner of an aircraft:

(i) access to transmit reports relating to the cargo of the aircraft; and

(ii) access to transmit variations of reports relating to the cargo of the aircraft; and

(iii) access to discover whether a cargo clearance advice has been granted or refused;

(b) if the registered user is not the owner of an aircraft—access to discover whether a cargo clearance advice has been granted or refused in respect of particular cargo.

(6) AQIS is permitted only such access to a cargo automation system as is set out below:

(a) access to any cargo report transmitted to Customs on the computer;

(b) access to discover, in the case of cargo brought to Australia by ship, whether a permit to unship has been granted, granted subject to conditions, or refused in respect of any goods covered by such a report;

(c) access to discover whether a cargo clearance advice has been granted or refused in respect of any goods covered by such a report.

(7) A port authority is permitted access only to the Sea Cargo Automation System and is permitted that access only to obtain such particulars from any cargo report transmitted to Customs on the system as are required for the purpose of compiling statistics and calculating wharfage charges.

Registered users

67C. **(1)** A person who wishes to become a registered user in relation to the Sea Cargo Automation System or the Air Cargo Automation System may apply to the CEO to be so registered in relation to that system.

(2) An application must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such information as the form requires; and

(d) be signed in the manner indicated in the form.

(3) The CEO may require an applicant for registration to give such additional information as the CEO considers necessary for the purposes of the application and may refuse to register the person until the information is given to the satisfaction of the CEO.

(4) If an application is made to the CEO under this section for registration in relation to the Sea Cargo Automation System or the Air Cargo Automation System, the CEO must, having regard to that application and, where additional information is supplied in response to a request under subsection (3), to that additional information:

(a) register the applicant as a registered user in relation to that system by signing a notice stating that the applicant is such a registered user; or

(b) refuse to register the applicant as a registered user in relation to that system by signing a notice stating that the CEO has refused to register the applicant and setting out the reasons for the refusal.

(5) Without limiting the generality of subsection (4), the CEO may refuse to register an applicant as a registered user in relation to a system if the CEO is satisfied that the applicant does not have, and is not likely to acquire within a reasonable time after making the application, computer facilities of the kind referred to in paragraph (7)(a) in respect of an application for such a registration.

(6) If the CEO registers a person as a registered user in relation to a system, the registration has effect from the day on which the relevant notice was signed.

(7) Each registered user in relation to a system must, as soon as practicable after registration, enter into an agreement with Customs, setting out the terms and conditions of computer access to Customs in accordance with section 67B including:

(a) a condition that the user will use computer facilities of a kind specified in the agreement as suitable for all computer communications with Customs on that system; and

(b) a condition that the user, when assigned an identifying code by the CEO, will ensure the security of the code in a manner indicated in the agreement.

(8) Where a registered user in relation to a system enters into a user agreement, the CEO must forthwith allocate to the user an identifying code for the use of the registered user and any employee of the user when communicating with Customs on that system.

(9) Where, at any time, the CEO becomes satisfied that a person who is a registered user in relation to a system has failed to comply:

(a) with an obligation imposed on the user under this Act; or

(b) with a term of the applicable user agreement;

the CEO may cancel the person's registration as a registered user in relation to that system by sending a notice to the person to the effect that the registration has been cancelled and setting out the reasons for that cancellation.

(10) The cancellation of the registration of a registered user in relation to a system has effect from the day the relevant notice is signed.

(11) The CEO must, as soon as practicable after signing a notice under subsection (4) or (9), serve a copy of the notice on the person concerned but a failure to do so does not alter the effect of the notice.

Unauthorised use of registered user's identifying code

67D. If a computer report is communicated to Customs using a registered user's identifying code:

(a) without the authority of the user to whom the code is assigned; and

(b) before notification to Customs by the user of a possible breach of security;

that report will be taken, subject to any evidence of the user to the contrary, to have been communicated by the user.

What happens if a cargo automation system is down?

67E. **(1)** If, because a cargo automation system is inoperative, a registered user in relation to that system cannot transmit a report or, in relation to a cargo report, a variation of the report, to Customs by computer, the user must communicate that report, or that variation, to Customs by document.

(2) If, because a cargo automation system is inoperative, Customs cannot transmit an acknowledgment by computer of a report, or of a variation of a cargo report, to the user, Customs must acknowledge that report, or that variation, by document.

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

Entry of imported goods

68. **(1)** This section applies to:

(a) goods that are imported into Australia; and

(b) goods that are intended to be imported into Australia and that are on board a ship or aircraft that has commenced its journey to Australia; and

(c) a ship or aircraft that is intended to be imported into Australia and that has commenced its journey to Australia;

but does not apply to:

(d) goods that are accompanied or unaccompanied personal or household effects of a passenger, or a member of a crew, of a ship or aircraft; and

(e) goods, other than prescribed goods:

(i) that are included in a consignment consigned through the Post Office by one person to another; and

(ii) that have a value not exceeding $1,000 or such other amount as is prescribed; and

(f) goods, other than prescribed goods:

(i) that are included in a consignment consigned otherwise than by post by one person to another; and

(ii) that are all transported to Australia in the same ship or aircraft; and

(iii) that have a value not exceeding $250 or such other amount as is prescribed; and

(g) containers:

(i) that are the property of a person carrying on business in Australia; and

(ii) that are imported on a temporary basis to be re-exported, whether empty or loaded; and

(h) containers:

(i) that were manufactured in Australia; and

(ii) that are, when imported into Australia, the property of a person carrying on business in Australia; and

(iii) that were the property of that person when, and have remained the property of that person since, they were exported or were last exported from Australia; and

(i) goods that, under the regulations, are exempted from this section, either absolutely or on such terms and conditions as are specified in the regulations.

(2) The owner of goods to which this section applies may, at any time before the ship or aircraft carrying the goods first arrives at a port or airport in Australia at which any goods are to be discharged, enter the goods:

(a) for home consumption; or

(b) for warehousing; or

(c) for transhipment.

(3) If the owner of goods to which this section applies does not enter the goods under subsection (2) for a purpose set out in that subsection, the owner must enter the goods for one or other such purpose after the ship or aircraft carrying the goods first arrives at a port or airport in Australia at which any goods are to be discharged.

(4) For the purposes of paragraph (1) (d), goods:

(a) in quantities exceeding what could reasonably be expected to be required by a passenger or member of the crew of a ship or aircraft for his or her own use; or

(b) that are, to the knowledge or belief of a passenger or member of the crew of a ship or aircraft, to be sold, or used in the course of trading, in Australia;

are not included in the personal or household effects of a passenger or crew member.

(5) For the purposes of paragraphs (1) (e) or (f), the value of goods must be ascertained or determined under Division 2 of Part VIII.

Like customable goods

69. (1) In this section:

"like customable goods" means:

(a) goods to which section 68 applies that are classified under a subheading specified in column 1 of the Table to section 19 of the *Customs Tariff Act 1995*; and

(b) any other goods that are prescribed for the purposes of this section.

(2) A person who has imported or who proposes to import particular like customable goods, or like customable goods of a particular kind, may apply to Customs, in writing, for permission to deliver those goods, or goods of that kind into home consumption without entering them for that purpose.

(3) An officer of Customs may, on receipt of an application under subsection (2), by notice in writing:

(a) grant permission for the particular like customable goods, or like customable goods of the particular kind, to which the application relates to be delivered into home consumption without entering them for that purpose; or

(b) refuse to grant such a permission and set out in the notice the reasons for so refusing.

(4) A permission granted in respect of particular goods, or goods of a particular kind, is subject:

(a) to the condition that, on or after their importation and before they are delivered into home consumption, goods to which the permission relates must have been, or must be, entered for warehousing; and

(b) to any other condition, specified in the permission, that Customs considers appropriate.

(5) Where:

(a) permission is granted in respect of particular goods or goods of a particular kind; and

(b) those goods or goods of that kind are delivered into home consumption under that permission;

the person to whom the permission is granted must:

(c) give Customs returns at such intervals, not exceeding 2 months, as are specified in the permission, providing particulars in accordance with section 71K or 71L in relation to those

goods or to goods of that kind that have, during the periods to which the returns relate, been delivered into home consumption; and

(d) at the time when each return is given to Customs, pay any duty owing at the rate applicable when the goods were delivered into home consumption; and

(e) comply with any conditions to which the permission is subject.

Penalty: $5,000.

(6) Where an officer of Customs is satisfied that a person to whom a permission has been granted under this section has failed to comply with any condition to which the permission is subject, the officer may:

(a) if the permission related to particular goods—at any time before those goods are delivered into home consumption; and

(b) if the permission related to goods of a particular kind—at any time while the permission remains in force;

by notice in writing, revoke the permission and set out in the notice the reasons for that revocation.

Special clearance goods

70. (1) In this section, **"special clearance goods"** means goods to which section 68 applies comprising:

(a) goods reasonably required for disaster relief or for urgent medical purposes; or

(b) engines or spare parts that are unavailable in Australia and are urgently required for ships or aircraft, or for other machinery that serves a public purpose; or

(c) perishable food.

(2) A person who has imported or proposes to import goods referred to in paragraph (a) of the definition of "special clearance goods" may apply to Customs at any time, in writing, for permission to deliver the goods into home consumption without entering them for that purpose.

(3) A person who has imported goods referred to in paragraph (b) or (c) of the definition of "special clearance goods" may apply to Customs, in writing, for permission to deliver the goods into home consumption without entering them for that purpose:

(a) if the goods become subject to Customs control outside the hours of business for dealing with import entries; and

(b) the application is made before those hours of business resume.

(4) Subject to subsection (5), an officer of Customs may, on receipt of an application under subsection (2) or (3), by notice in writing:

(a) grant permission for the goods to which the application relates to be delivered into home consumption without entering them for that purpose; or

(b) refuse to grant such a permission and set out in the notice the reasons for so refusing.

(5) A permission granted in respect of goods is subject to any condition, specified in the permission, that Customs considers appropriate.

(6) Where an application is made in respect of perishable food, an officer of Customs must not grant the permission unless he or she is satisfied that, if he or she refused to do so, the food would be of little or no commercial value when the hours of business for dealing with import entries resumed.

(7) Where permission is granted in respect of goods, the person to whom the permission is granted must:

(a) give Customs a return, within 7 days of the delivery of the goods into home consumption, providing particulars in accordance with section 71K or 71L in relation to the goods; and

(b) at the time when the return is given to Customs, pay any duty or sales tax owing at the rate applicable when the goods were delivered into home consumption; and

(c) comply with any condition to which the permission is subject.

Penalty: $5,000.

(8) Where an officer of Customs is satisfied that a person to whom a permission has been granted under this section has failed to comply with any of the conditions to which the permission is subject, the officer may, at any time before goods are delivered into home consumption, by notice in writing, revoke the permission and set out in the notice the reasons for that revocation.

(9) In this section, a reference to the hours of business for dealing with import entries is a reference:

(a) if an applicant is a registered COMPILE user—to a time when, under regulations made for the purposes of section 28, the applicant would be able to give a documentary import entry, or transmit a computer import entry, to Customs; and

(b) if an applicant is not a registered COMPILE user—to a time when, under those regulations, the applicant would be able to give a documentary import entry to Customs.

Information in relation to goods not requiring import entry

71. (1) The owner of the goods of a kind referred to in paragraphs 68 (1) (d), (e), (f) or (i) must, in any circumstances specified in the regulations, provide such information:

(a) at such time; and

(b) in such manner and form;

as the regulations specify.

(2) Where goods of a kind referred to in subsection (1) are imported into Australia, Customs must, having regard to any information given to Customs in accordance with the regulations and any further information supplied under section 196C, by notice in writing:

(a) authorise the delivery of those goods into home consumption; or

(b) refuse to authorise the delivery of those goods into home consumption and give reasons for its refusal.

Making an import entry

71A. (1) An import entry is a communication to Customs of information concerning goods to which section 68 applies that are intended to be entered for home consumption, for warehousing, or for transhipment, that is effected:

(a) by document; or

(b) except so far as goods intended to be entered for transhipment are concerned—by computer.

(2) A documentary import entry must:

(a) be made by the owner of the goods concerned; and

(b) be communicated to Customs:

(i) by giving it to an officer doing duty in relation to entries under this Part; or

(ii) by leaving it at a place that has been allocated for lodgment of import entries in a Customs Office;

at the place at which the goods are to be delivered for home consumption, warehousing, or transhipment.

(3) A computer import entry must be transmitted by a registered COMPILE user as the owner, or on behalf of the owner, of the goods concerned.

(4) Despite the fact that any law of the Commonwealth, including this Act, provides that the importation of particular goods into Australia is prohibited unless a permission (however it is described) to import those goods is produced to an officer of Customs, that obligation will, in such cases as are prescribed, be taken to have been

complied with if the permission obtained in respect of those goods is adequately identified in the information communicated to Customs in an import entry relating to those goods.

(5) Nothing in subsection (4) affects any power of an officer of Customs, under this Act, to require the production of such permission.

(6) When an import entry is, or is taken under section 71L to have been, communicated to Customs, and the goods to which the entry relates have been imported or have been brought to the first port or airport in Australia at which any goods are to be discharged, the goods are taken to have been entered.

(7) When an import entry is, or is taken under section 71L to have been, communicated to Customs before the goods to which the entry relates have been brought to the first port or airport in Australia at which any goods are to be discharged, the goods are taken to have been entered only when they are brought to that port or airport.

Authority to deal with goods entered under section 71A

71B. (1) Where an entry in respect of goods has been given or transmitted to Customs, Customs must give an import entry advice, by document or computer, in accordance with this section.

(2) An import entry advice relating to goods entered by documentary import entry:

(a) must be given to the owner of the goods or be made available for collection by leaving it at a place in a Customs office that has been allocated for collection of such advices; and

(b) must contain:

(i) a statement to the effect that the goods are cleared for home consumption, warehousing, or transhipment; or

(ii) a statement that the goods are directed for further examination.

(3) An import entry advice relating to goods entered by a computer import entry:

(a) must refer to the entry number given by the COMPILE computer system to the particular import entry; and

(b) must be transmitted to the registered COMPILE user whose PIN number was transmitted in relation to the entry; and

(c) must include:

(i) a statement to the effect that the goods are cleared for home consumption or warehousing; or

(ii) a statement that the goods are directed for further examination.

(3A) An authority to deal may not be issued unless a cargo clearance advice authorising the goods the subject of the import entry advice to be released for home consumption or warehousing has first been issued under section 74A.

(4) Where:

(a) an import entry advice is given or transmitted under this section; and

(b) a payment is made of any duty, sales tax or other charge payable at the time of entry on the goods covered by the import entry advice together with all administrative charges associated with the making of that entry;

Customs must:

(c) if the advice was given under subsection (2)—give the person to whom the advice was given an authority, in writing, to take the goods into home consumption, to warehouse them or to tranship them, as the case requires; and

(d) if the advice was given under subsection (3)—give the person to whom the advice was transmitted, by message transmitted to the person, an authority to take the goods into home consumption or to warehouse them, as the case requires.

(4A) Without limiting the generality of the reference in subsection (4) to administrative charges associated with the making of an entry, that reference includes, in relation to a documentary import entry, an amount specified in the regulations as a fee payable for assistance provided in preparing the entry for use in a Customs computer system.

(5) Where goods are authorised to be taken into home consumption, to be warehoused or to be transhipped, the authority to deal, whether given by document or computer, must set out:

(a) any condition, of the kind referred to in subsection (6), to which the authority is subject; and

(b) the date on which the authority is given; and

(c) such other information as is prescribed.

(6) An authority to deal with goods may be expressed to be subject to a condition that a specified permission for the goods to be dealt with (however it is described) be obtained under another law of the Commonwealth.

(7) Where an authority to deal with goods is expressed to be subject to the condition that a specified permission be obtained, the authority is taken not to have been given until the permission has been obtained.

(8) An officer may, at any time before goods authorised to be taken into home consumption, to be warehoused or to be transhipped are so dealt with, cancel that authority:

(a) if the authority was given in respect of a documentary entry—by signing a notice stating that the authority is cancelled and setting out the reasons for that cancellation and serving a copy of that notice on the person who made the entry or, if that person does not have possession of the goods, on the person who has possession of the goods; and

(b) if the authority was given in respect of a computer entry:

(i) by transmitting to the registered COMPILE user to whom the authority was given a cancellation notice setting out the same particulars as are required to be included in a notice referred to in paragraph (a); or

(ii) by signing and serving a notice of the kind referred to in paragraph (a) on the registered COMPILE user to whom the authority was given, or, if that person does not have possession of the goods, on the person who has possession of the goods;

and the cancellation has effect from the moment the notice is served or transmitted, as the case requires.

Visual examination in presence of officer of Customs

71C. (1) If a person permitted or required to make an import entry in respect of goods to which section 68 applies does not have the information to complete the entry, the person may make application to Customs, by document, for permission to examine the goods in the presence of an officer of Customs.

(2) An application must be communicated to Customs by giving it to an officer of Customs doing duty in relation to import entries.

(3) When an application is given to Customs under subsection (2), an officer of Customs must, by notice in writing, give the applicant permission to examine the goods to which the application relates on a day and at a place nominated in the notice.

(4) A person who has received a visual examination permission may examine the goods in accordance with the permission in the presence of an officer of Customs.

An officer of Customs may request additional information

71D. (1) Without limiting the generality of the information that may be required to be included in an import entry, where goods have been entered, authority to deal with the goods in accordance with the entry may be refused until an officer doing duty in relation to import entries:

(a) has verified particulars of the goods shown in the entry; or

(b) is satisfied of any other matter that may be relevant to the granting of an authority to deal.

(2) An officer doing duty in relation to import entries may, by document or by computer, require the owner of goods entered under section 71A:

(a) to deliver to the officer the commercial documents in respect of the goods that are in the owner's possession or under the owner's control (including any such documents that had previously been delivered to an officer and had been returned to the owner); or

(b) to deliver to the officer such information, in writing, relating to the goods, 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) A documentary requirement for the delivery of documents or information in respect of an import entry must:

(a) be communicated to the person by whom, or on whose behalf, the entry was communicated; and

(b) be in an approved form and contain such particulars as the form requires.

(4) A computer requirement for the delivery of documents or information in respect of an import entry must:

(a) be transmitted to the registered COMPILE user by whom, or on whose behalf, the entry was communicated; and

(b) be transmitted using the COMPILE computer system; and

(c) communicate such particulars as are set out in an approved statement.

(5) An officer doing duty in relation to import entries may ask the owner of goods entered under section 71A and, if another person communicated the entry on behalf of the owner, that other person, any questions relating to the goods.

(6) An officer doing duty in relation to import entries may require the owner of any goods entered under section 71A to verify the particulars shown in the entry by declaration or the production of documents.

(7) Where:

(a) the owner of goods has been required to deliver documents or information in relation to the goods under subsection (2); or

(b) the owner of, or the person giving an entry in respect of, goods has been asked a question in respect of the goods under subsection (5); or

(c) the owner of goods has been required to verify a matter in respect of the goods under subsection (6);

authority to deal with the relevant goods in accordance with the entry must not be granted unless:

(d) the requirement referred to in paragraph (a) has been complied with or withdrawn; or

(e) the question referred to in paragraph (b) has been answered or withdrawn; or

(f) the requirement referred to in paragraph (c) has been complied with or withdrawn, or a security has been taken for compliance with the requirement;

as the case requires.

(8) Subject to section 215, where a person delivers a commercial document to an officer doing duty in relation to import entries under this section, the officer must deal with the document and then return the document to that person.

Application for movement permission

71E. (1) Where particular goods, or goods of a particular kind, are, or after their importation will be, subject to Customs control, application may be made to Customs, by document or by computer, in accordance with this section, for permission to move those goods, or goods of that kind, or to move them after their importation, to a place specified in the application.

(2) A documentary movement application must:

(a) be made by the owner of the goods concerned; and

(b) be communicated to Customs by giving it to an officer doing duty in relation to import entries or to the movement of goods subject to Customs control.

(2A) A computer movement application must be transmitted by a registered user of a cargo automation system as the owner, or on behalf of the owner, of the goods concerned.

(3) When an application is communicated to Customs under subsection (2) or (2A), an officer of Customs must, by notice in writing in respect of a documentary movement application under subsection (2), or by computer transmission using a cargo automation system in respect of a computer movement application under subsection (2A):

(a) give the applicant permission to move the goods to which the application relates in accordance with the application either absolutely or subject to such conditions as are specified in the notice; or

(b) refuse the application and set out in the notice the reasons for that refusal.

(3A) A person to whom a permission has been given under subsection (3) must not, without reasonable excuse, move the goods to which the permission relates otherwise than in accordance with the permission.

Penalty: $50,000.

(3B) If a person moves goods otherwise than in accordance with the requirement of a permission to which the goods relate, the movement of the goods is, for the purposes of paragraph 229 (1) (g), taken not to have been authorised by this Act.

(4) Where goods are moved to a place other than a warehouse in accordance with a permission under subsection (3), an officer of Customs may, at any time while the goods remain under Customs control, direct in writing that they be moved from that place to a warehouse specified in the direction within a period specified in the direction.

(5) If goods are not moved in accordance with such a direction, an officer of Customs may arrange for the goods to be moved to the warehouse specified in the direction or to any other warehouse.

(6) Where an officer of Customs has arranged for goods to be moved to a warehouse, Customs has a lien on the goods for any expenses incurred in connection with their removal to the warehouse and for any warehouse rent and charges incurred in relation to the goods.

Withdrawal of import entries

71F. (1) At any time after an import entry is communicated to Customs and before the goods to which it relates are dealt with in accordance with the entry, a withdrawal of the entry may be communicated to Customs by document or computer.

(2) A documentary withdrawal of an import entry must:

(a) be communicated by the person by whom, or on whose behalf, the entry was communicated; and

(b) be communicated to Customs by giving it to an officer doing duty in relation to import entries.

(3) A computer withdrawal of an import entry in respect of particular goods must be transmitted by a registered COMPILE user as, or on behalf of, the owner of the goods.

(4) A withdrawal of an import entry has no effect during any period while a requirement under subsection 71D (2) in respect of the goods to which the entry relates has not been complied with.

(5) A withdrawal of an entry is effected when it is, or is taken under section 71L to have been, communicated to Customs.

(6) If:

(a) an import entry is communicated to Customs; and

(b) duty remains unpaid in respect of goods covered by the entry for 30 days starting on the day on which the import entry advice in respect of those goods is communicated; and

(c) after that period ends, the Collector gives written notice to the owner of the goods requiring payment of duty within a further period set out in the notice; and

(d) duty is not paid within the further period;

the import entry is taken to have been withdrawn under subsection (1).

Goods not to be entered while an entry is outstanding

71G. Where goods have been entered for home consumption under subsection 68 (2) or (3), a person must not communicate a further import entry to Customs in respect of those goods or of any part of those goods unless the first-mentioned entry is withdrawn.

Penalty: $1,500.

Effect of withdrawal

71H. (1) When a withdrawal of an import entry takes effect, any authority to deal with the goods to which the entry relates is revoked.

(2) Despite the withdrawal of an import entry:

(a) a person may be prosecuted, or action taken under section 243T, in respect of the entry; and

(b) a penalty may be imposed on a person who is convicted of an offence in respect of the entry;

as if it had not been withdrawn.

(3) The withdrawal of a documentary entry does not entitle the person who communicated it to have it returned.

Change of import entry treated as withdrawal

71J. Where a person who has communicated an import entry changes information included in that entry, the person is taken, at the time when an import entry advice is given or transmitted in respect of the altered entry, to have withdrawn the entry as it previously stood.

Manner of communicating with Customs by document

71K. An import entry, a withdrawal of an import entry, a visual examination application, a movement application, or a return for the purposes of subsection 69 (5) or 70 (7), that is communicated to Customs by document:

(a) must be in an approved form; and

(b) must include such information as the approved form requires; and

(c) must be signed in the manner indicated in the approved form.

Manner and effect of communicating with Customs by computer

71L. (1) An import entry, a withdrawal of such an entry, or a return for the purposes of subsection 69 (5), 70 (7) or 77D (5) that is transmitted to Customs by computer:

(a) must be transmitted using the COMPILE computer system during a time when, under regulations made for the purpose of section 28, a person can transmit a computer import entry to Customs; and

(b) must be signed by transmitting, in relation to the entry or the withdrawal, the registered COMPILE user's PIN number; and

(c) must communicate such information as is set out in an approved statement relating to that communication.

(2) For the purposes of this Act, an import entry, a withdrawal of such an entry, or a return for the purposes of subsection 69 (5), 70 (7) or 77D (5) is taken to have been communicated to Customs by computer when an import entry advice or an acknowledgment of the withdrawal or of the return is transmitted by Customs using the COMPILE computer system to the registered COMPILE user whose PIN number was transmitted in relation to the entry or withdrawal.

(3) A movement application that is transmitted to Customs by computer:

(a) must be transmitted using a cargo automation system or the COMPILE computer system during a time when, under regulations made for the purposes of section 28, a person can transmit a computer entry to Customs; and

(b) must be signed by transmitting, in relation to the application, the registered user's identifying code under the cargo automation system or the registered COMPILE user's PIN number, as the case requires; and

(c) must communicate such information as is set out in an approved statement relating to that communication.

(4) For the purposes of this Act, a movement application is taken to have been communicated to Customs by computer:

(a) when an acknowledgment of the application is transmitted by Customs using a cargo automation system to the registered user of that system whose identifying code was transmitted in relation to the application; or

(b) when an acknowledgment of the application is transmitted by Customs using the COMPILE computer system to the registered COMPILE user whose PIN number was transmitted in relation to the application;

as the case requires.

Failure to make entries

72. **(1)** Where:

(a) imported goods are required to be entered; and

(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 or permit the goods to be removed to a warehouse or such other place of security as the Collector directs or permits.

(2) Where goods that have been, or may be, removed under subsection (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, or otherwise dispose of, the goods.

(3) A Collector has a lien on goods for any expenses incurred by him in connection with their removal under subsection (1) and for any warehouse rent or similar charges incurred in relation to the goods.

(4) Where:

(a) goods (other than goods to which subsection (2) applies) have been, or may be, removed under subsection (1); and

(b) all things that are required to be done to enable authority to deal with the goods to be given under section 71B, including the making of an entry in respect of the goods, are not done within:

(i) if the goods have been removed—such period as is prescribed commencing on the removal of the goods; or

(ii) if the goods have not been removed—such period as is prescribed commencing on the expiration of the period applicable under paragraph (1) (b) in relation to the goods;

a Collector may sell, or otherwise dispose of, the goods.

(5) A period prescribed for the purposes of subsection (1) or subparagraph (4) (b) (i) or (ii) may be a period prescribed in relation to all goods or in relation to goods in a class of goods.

Breaking bulk

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

Penalty: $25,000.

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

(a) flying over Australia;

(b) in, or flying over, the waters within 12 nautical miles of the base line of the territorial seas of Australia; or

(c) in, or flying over, the waters within 12 nautical miles of the coast of an island forming part of Australia.

Penalty: $25,000.

(3) Subsections (1) and (2) do not apply in respect of goods authority to deal with which has been given under section 71B.

Authority for unshipment

74. (1) Except as prescribed, the master or owner of a ship or the pilot or owner of an aircraft must not unship goods at a port or airport otherwise than in accordance with a Collector's permit to unship the goods.

Penalty: $25,000.

(2) A Collector's permit to unship goods may be subject to such conditions as are specified in the permit.

(3) Subject to subsection (4), a permit to unship must be communicated:

(a) to the person who communicated to Customs the cargo report covering the goods to which the permit relates; and

(b) to any other person responsible for the physical removal of the cargo covered by the report from the ship or aircraft.

(4) If a permit to unship goods is communicated to a person other than the person who communicated to Customs that cargo report covering the goods, Customs may inform that other person of any conditions attaching to the grant of the permit that directly affect the physical removal of goods covered by the cargo report but must not disclose any other conditions or the reasons for the imposition of any of the conditions to which the grant of the permit is subject.

Cargo clearance

74A. If:

(a) a person has lodged a cargo report in respect of goods intended to be discharged at a port or airport in Australia; and

(b) a permit to unship the goods has been issued under section 74; and

(c) an officer of Customs doing duty in relation to cargo is satisfied that there is no reason why the goods cannot be released for home consumption or warehousing;

the Customs officer may, by document or by computer, grant a cargo clearance advice authorising the goods to be so released.

Goods landed on permit at ship's risk etc.

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.

Repacking on wharf

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

Division 4A—The use of computers for import entry purposes

Registered COMPILE users

77A. **(1)** To communicate with Customs by computer for a purpose identified in Division 4, a person must be a registered COMPILE user.

(2) A person wishing to become a registered COMPILE user may apply to the CEO to be so registered.

(3) An application must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such information as the form requires; and

(d) be signed in the manner indicated in the form.

(4) The CEO may require an applicant for registration to give such additional information as the CEO considers necessary for the purposes of this Act and may refuse to register the person until the information is given to the satisfaction of the CEO.

(5) Where an application is made to the CEO under this section, the CEO must, having regard to that application and, where additional information is supplied in response to a request under subsection (4), to that additional information:

(a) register the applicant as a registered COMPILE user by signing a notice stating that the applicant is a registered COMPILE user; or

(b) refuse to register the applicant as a registered COMPILE user by signing a notice stating that the CEO has refused to register the applicant and setting out the reasons for the refusal.

(6) Without limiting the generality of subsection (5), the CEO may refuse to register an applicant as a registered COMPILE user if the CEO is satisfied that the applicant does not have and is not likely to acquire within a reasonable time after making the application, computer facilities of the kind referred to in paragraph (8) (a).

(7) Where the CEO registers a person as a registered COMPILE user, the registration has effect from the day on which the relevant notice was signed.

(8) Each registered COMPILE user must, as soon as practicable after registration, enter into an agreement with Customs, setting out the terms and conditions of computer access to Customs for the purpose of communications relating to the importation of goods including:

(a) a condition that the user will use computer facilities of a kind specified in the agreement for all computer communications with Customs relating to import entries; and

(b) a condition that the user, when assigned a personal identification number by the CEO, will ensure the security of the number in a manner indicated in the agreement.

(9) Where a registered COMPILE user enters into a COMPILE user agreement, the CEO must forthwith allocate to the user:

(a) if the user is a natural person—a PIN number or sufficient PIN numbers for the user and each employee of the user who is nominated to Customs in accordance with the agreement; or

(b) if the user is not a natural person—sufficient PIN numbers for each employee of the user who is nominated to Customs in accordance with the agreement.

(10) A registered COMPILE user who is a licensed customs agent under Part XI of this Act must not allocate a PIN number to an employee of that agent unless the employee is himself or herself a licensed customs agent under that Part.

(11) Where, at any time the CEO becomes satisfied that a person who is a registered COMPILE user has failed to comply:

(a) with an obligation imposed on the user under this Act; or

(b) with a term of the applicable COMPILE user agreement;

the CEO may cancel the allocation of all or any of the PIN numbers allocated to the user by sending a notice that the allocation has been cancelled and setting out the reasons for that cancellation.

(12) The cancellation of the allocation to a registered COMPILE user of a PIN number or PIN numbers has effect from the day the relevant notice was signed.

(13) The CEO must, as soon as practicable after signing a notice under subsection (5) or (11), serve a copy of the notice on the person concerned but a failure to do so does not alter the effect of the notice.

Unauthorised use of registered COMPILE user's PIN number

77B. Where a computer import entry or a withdrawal of such an entry is communicated to Customs using a registered COMPILE user's PIN number:

(a) without the authority of the user to whom the number was assigned; and

(b) before notification to Customs by the user of a possible breach of security;

that entry or withdrawal will be taken, subject to any evidence of the user to the contrary, to have been communicated by the user.

Contingency arrangements to apply when the COMPILE computer system is down

77C. (1) The contingency arrangements set out in sections 77D and 77E:

(a) only apply if the CEO declares, in writing, that they are to apply; and

(b) only cease to apply if the CEO declares, in writing, that they cease to apply.

(2) The COMPILE computer system is inoperative if:

(a) registered COMPILE users cannot transmit to Customs import entries; or

(b) Customs cannot transmit to registered COMPILE users import entry advices; or

(c) Customs cannot transmit to registered COMPILE users authorities to take goods into home consumption or to warehouse them.

(3) If the COMPILE computer system is inoperative, the CEO may declare, in writing, that the contingency arrangements apply.

(4) If:

(a) the CEO has declared, in writing, that the contingency arrangements apply; and

(b) the COMPILE computer system becomes operative again;

the CEO may declare, in writing, that the contingency arrangements cease to apply.

(5) If the CEO makes a declaration under subsection (3) or (4), the CEO must communicate the declaration, in a prescribed manner, to all registered COMPILE users.

Contingency arrangements for goods not subject of an import entry advice

77D. **(1)** If, while a declaration that contingency arrangements apply is in force:

(a) a registered COMPILE user cannot enter for home consumption or warehousing goods imported or proposed to be imported; or

(b) Customs cannot transmit to a registered COMPILE user an import entry advice in respect of goods so imported or proposed to be imported;

the user may apply to Customs, in writing, for permission to take the goods into home consumption, or to warehouse them.

(2) An application must:

(a) be in an approved form; and

(b) include such information as the approved form requires; and

(c) be signed in the manner indicated in the approved form.

(3) Subject to subsection (4), an officer of Customs may, on receipt of an application, by notice in writing:

(a) grant permission for the goods to which the application relates to be taken into home consumption, or to be warehoused; or

(b) refuse to grant such a permission and set out in the notice the reasons for so refusing.

(4) A permission granted in respect of such goods is subject to any condition specified in the permission that Customs considers appropriate.

(5) If permission is granted in respect of such goods, the registered COMPILE user to whom the permission is granted must not without reasonable excuse fail to:

(a) give Customs a return:

(i) by the end of the working day next following the day on which the CEO declares that the contingency arrangements cease to apply; or

(ii) within such longer period as is specified in the permission;

providing particulars in accordance with section 71L in respect of the goods; and

(b) at the time when the return is given to Customs, pay any duty, sales tax or other charge owing at the rate applicable at the time the permission is granted; and

(c) comply with any condition to which the permission is subject.

Penalty: 50 penalty units.

(6) If:

(a) an officer of Customs is satisfied that a registered COMPILE user to whom a permission has been granted under this section in respect of goods has failed to comply with any of the conditions to which the permission is subject; and

(b) all or any of the goods have not been taken into home consumption or warehoused in accordance with the permission;

the officer may, at any time before those goods are taken into home consumption or warehoused, by notice in writing, revoke the permission and set out in the notice the reasons for the revocation.

(7) If:

(a) an application has been delivered to Customs in respect of goods; and

(b) before an officer of Customs has decided whether or not to grant permission for the goods to be taken into home consumption or to be warehoused, the CEO declares, in writing, that the contingency arrangements cease to apply;

the application is taken to have been withdrawn.

Contingency arrangements for goods the subject of an import entry advice

77E. (1) If, while a declaration that contingency arrangements apply is in force, a registered COMPILE user:

(a) has received an import entry advice in respect of goods; but

(b) has not received an authority to take the goods into home consumption or to warehouse them;

the user may apply to Customs, in writing, for permission to take the goods into home consumption or to warehouse them.

(2) An application must:

(a) be in an approved form; and

(b) include such information as the approved form requires; and

(c) be signed in the manner indicated in the approved form; and

(d) if, at the time of making an application, the user had been required under subsection 71D (2) to give Customs commercial documents or additional information but had not complied with that requirement—be accompanied by the commercial documents or additional information so required.

(3) Subject to subsection (4), an officer of Customs may, on receipt of an application, by notice in writing:

(a) grant permission for the goods to which the application relates to be taken into home consumption or to be warehoused; or

(b) refuse to grant such a permission and set out in the notice the reasons for so refusing.

(4) A permission granted in respect of such goods is subject to any condition, specified in the permission, that Customs considers appropriate.

(5) If permission is granted in respect of such goods, the registered COMPILE user to whom the permission is granted must not without reasonable excuse fail to:

(a) comply with any condition to which the permission is subject; and

(b) if, at the time of making an application, the user had not paid any duty, sales tax or other charge owing in relation to the goods—by the end of the working day next following the day on which the CEO declares that the contingency arrangements cease to apply, pay any duty, sales tax or other charge owing at the rate applicable at the time the permission is granted.

Penalty: 50 penalty units.

(6) If:

(a) an officer of Customs is satisfied that a registered COMPILE user to whom a permission has been granted under this section has failed to comply with any of the conditions to which the permission is subject; and

(b) all or any of the goods have not been taken into home consumption or warehoused in accordance with the permission;

the officer may, at any time before the user takes those goods into home consumption or warehouses them, by notice in writing, revoke the permission and set out in the notice the reasons for the revocation.

(7) If:

(a) an application has been delivered to Customs in respect of goods; and

(b) before an officer of Customs has decided whether or not to grant permission for the goods to be taken into home consumption or to be warehoused, the CEO declares, in writing, that the contingency arrangements cease to apply;

the application is taken to have been withdrawn and Customs must deal with the computer import entry, transmitted by the registered COMPILE user who provided the application to Customs, in the normal manner.

PART V—WAREHOUSES

Interpretation

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.

(2) A reference in this Part to the CEO shall be read as including a reference to a Regional Director 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.

Warehouse licences

79. (1) Subject to this Part, the CEO 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.

(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 blending or packaging, processing, trading or other activities specified in the licence to be carried on in the warehouse.

Applications for warehouse licences

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 CEO is required to consider for the purposes of paragraph 81 (1) (a), (b), (c) or (d);

(e) set out such particulars of the matters that the CEO is required to consider for the purposes of paragraph 81 (1) (e), (f) or (g) as will enable him adequately to consider those matters; and

(f) contain such other information as is prescribed.

Requirements for grant of warehouse licence

81. **(1)** The CEO 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;

(da) where the applicant is a company—the company is not a fit and proper company to hold a warehouse licence;

(e) the physical security of the place in relation to which the licence is sought is not adequate having regard to:

(ia) the nature of the place;

(i) the kinds and quantity 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 CEO shall, in determining whether a person is a fit and proper person for the purposes of paragraph (1) (a), (b), (c) or (d), 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.

(3) The CEO shall, in determining whether a company is a fit and proper company for the purposes of paragraph (1) (da), have regard to:

(a) any conviction of the company of an offence against this Act committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;

(b) any conviction of the company of an offence under a law of the Commonwealth, of a State or of a Territory that is punishable by a fine of $5,000 or more, being an offence committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;

(c) whether a receiver of the property, or part of the property, of the company has been appointed;

(ca) whether the company is under administration within the meaning of the Corporations Law;

(cb) whether the company has executed under Part 5.3A of that Law a deed of company arrangement that has not yet terminated;

(d) whether the company has been placed under official management; or

(e) whether the company is being wound up.

Conditions of warehouse licences

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;

(ba) in the case of a licence held by a company—any of the following events occurs:

(i) the company is convicted of an offence of a kind referred to in paragraph 81 (3) (a) or (b);

(ii) a receiver of the property, or part of the property, of the company is appointed;

(iii) an administrator of the company is appointed under section 436A, 436B or 436C of the Corporations Law;

(iv) the company executes a deed of company arrangement under Part 5.3A of that Law;

(v) the company begins to be wound up;

(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 81 (2) (a) or (b) 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, bankruptcy or appointment, as the case requires, give the CEO particulars in writing of that event, change, conviction, bankruptcy or appointment, as the case requires.

(2) A warehouse licence is subject to such other conditions (if any) for the protection of the revenue, for the purpose of ensuring compliance with the Customs Acts or otherwise 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 CEO to be necessary or desirable for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts.

(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 CEO 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

83. (1) 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.

(2) Notwithstanding that a warehouse licence has not been renewed, a Collector may:

(a) permit goods to be placed in the former warehouse;

(b) permit the removal of goods from the former warehouse, including the removal of goods to a warehouse;

(c) by notice in writing to the last holder of the licence, require him to remove all or specified goods in the former warehouse to a warehouse approved by the Collector;

(d) take such control of the former warehouse or all or any goods in the former warehouse as may be necessary for the protection of the revenue or for ensuring compliance with the Customs Acts;

(e) by notice in writing to the last holder of the licence, require him to pay to the Customs in respect of the services of officers required as the result of the licence not having been renewed (including services relating to the supervision of activities in relation to the former warehouse permitted by a Collector, the

stocktaking of goods in the former warehouse or the reconciliation of records relating to such goods) such fee as the CEO determines having regard to the cost of the services;

(f) where the last holder of the licence fails to comply with a requirement under paragraph (c) in relation to goods, remove the goods from the former warehouse to a warehouse; and

(g) where goods have been removed in accordance with paragraph (f), by notice in writing to the last holder of the licence, require him to pay to the Customs in respect of the cost of the removal such fee as the CEO determines having regard to that cost.

(3) Subject to subsection (4), where a warehouse licence has not been renewed and goods remain in the former warehouse, the CEO 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 former 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 former warehouse:

(d) that they are required, within a time specified in the notice or any further time allowed by the CEO, to:

(i) pay to the Collector duty payable in respect of their goods in the former warehouse; or

(ii) remove their goods in the former 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 former warehouse will be sold.

(4) Where the CEO is satisfied that all the goods in a former warehouse the licence in respect of which has not been renewed are the property of the person who held the licence, the notice referred to in subsection (3) need not be published as mentioned in that subsection 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 expiration of the licence, apparently participated in the management or control of the former warehouse.

(5) Where the owner of goods to which a notice under subsection (3) applies fails to comply with the requirements of the notice within the time specified in the notice or any further time allowed by the CEO, the goods may be sold by a Collector.

(6) If an amount that the last holder of a licence is required to pay in accordance with a notice under paragraph (2) (e) or (g) is not paid, that amount may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

Renewal of warehouse licence

84. (1) The CEO 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 CEO may specify conditions different from those specified in the original licence.

(3) The CEO 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

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

(2) Regulations for the purposes of subsection (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.

Suspension of warehouse licences

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

(a) the physical security of the warehouse is no longer adequate having regard to the matters referred to in paragraph 81 (1) (e);

(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;

(fa) where the licence is held by a company—the company is not a fit and proper company to hold a warehouse licence;

(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 or for the purpose of ensuring compliance with the Customs Acts to give the notice.

(1A) The CEO shall, in considering whether a person is a fit and proper person for the purposes of paragraph (1) (c), (d), (e) or (f), have regard to:

(a) any conviction of the person of an offence against this Act committed:

(i) where the licence has not been renewed—after the grant of the licence or within 10 years immediately preceding the making of the application for the licence;

(ii) where the licence has been renewed on one occasion only—after the renewal of the licence or within 10 years immediately preceding the making of the application for the renewal; or

(iii) where the licence has been renewed on more than one occasion—after the latest renewal of the licence or within 10 years immediately preceding the making of the application for the latest renewal;

(b) any conviction of the person of 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:

(i) where the licence has not been renewed—after the grant of the licence or within 10 years immediately preceding the making of the application for the licence;

(ii) where the licence has been renewed on one occasion only—after the renewal of the licence or within 10 years immediately preceding the making of the application for the renewal; or

(iii) where the licence has been renewed on more than one occasion—after the latest renewal of the licence or within 10 years immediately preceding the making of the application for the latest renewal; or

(c) whether the person is an undischarged bankrupt.

(1B) The CEO shall, in considering whether a company is a fit and proper company for the purposes of paragraph (1) (fa) have regard, in relation to the company, to:

(a) any conviction of the company of an offence against this Act that was:

(i) where the licence has not been renewed—committed after the grant of the licence;

(ii) where the licence has been renewed on one occasion only—committed after the renewal of the licence;

(iii) where the licence has been renewed on more than one occasion—committed after the latest renewal of the licence; or

(iv) committed:

(A) where the licence has not been renewed—within 10 years immediately preceding the making of the application for the licence;

(B) where the licence has been renewed on one occasion only—within 10 years immediately preceding the making of the application for the renewal of the licence; or

(C) where the licence has been renewed on more than one occasion—within 10 years immediately preceding the making of the application for the latest renewal of the licence;

and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;

(b) any conviction of the company of an offence under a law of the Commonwealth, of a State or of a Territory that is punishable by a fine of $5,000 or more, being an offence that was:

(i) where the licence has not been renewed—committed after the grant of the licence;

(ii) where the licence has been renewed on one occasion only—committed after the renewal of the licence;

(iii) where the licence has been renewed on more than one occasion—committed after the latest renewal of the licence; or

(iv) committed:

(A) where the licence has not been renewed—within 10 years immediately preceding the making of the application for the licence;

(B) where the licence has been renewed on one occasion only—within 10 years immediately preceding the making of the application for the renewal of the licence; and

(C) where the licence has been renewed on more than one occasion—within 10 years immediately preceding the making of the application for the latest renewal of the licence;

and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company; or

(c) the matters mentioned in paragraphs 81 (3) (c), (d) and (e).

(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 CEO 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 CEO to be necessary for the protection of the revenue or for ensuring compliance with the Customs Acts to do so, state that the licence is suspended;

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

(5) Where a warehouse licence is suspended under this section, the CEO:

(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 subsection (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: $5,000.

(7) Notwithstanding subsection (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 a prescribed manner 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 or for ensuring compliance with the Customs Acts; 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 CEO 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 (7) (f) is not paid, that amount may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

Cancellation of warehouse licences

87. (1) The CEO 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 subsection 86 (1); or

(b) he is satisfied on any other grounds that cancellation of the licence is necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts.

(2) The CEO shall cancel a warehouse licence under subsection (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.

(4) Subject to subsection (5), where the CEO 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 CEO, 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 CEO 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 referred to in subsection (4) need not be published as mentioned in that subsection 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 subsection (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 CEO, 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 CEO to do so, surrender the licence to the CEO.

Penalty: $100.

Service of notices

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

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

90. (1) 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 furniture 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: $1,000.

(2) A requirement imposed on the holder of a warehouse licence under paragraph (1) (c) shall be set out in a notice in writing served, either personally or by post, on the holder of the licence.

Access to warehouses

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.

Repacking in warehouse

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

Regauging etc. of goods

93. Where:

(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.

Goods not worth duty may be destroyed

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.

(2) The destruction of warehoused goods under subsection (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.

Revaluation

95. Where a Collector is satisfied that warehoused goods that have been valued for the purposes of this Act in accordance with Division 2 of Part VIII 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 Division 2 of Part VIII revalue those goods as at the time of the revaluation.

Arrears of warehouse charges

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;

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.

Outwards duty free shops

96A. (1) In this section:

"international flight" means a flight, whether direct or indirect, by an aircraft between a place in Australia from which the aircraft takes off and a place outside Australia at which the aircraft lands or is intended to land;

"international voyage" means a voyage, whether direct or indirect, by a ship between a place in Australia and a place outside Australia;

"outwards duty free shop" means a warehouse in respect of which the relevant warehouse licence authorises the sale in the warehouse of goods to relevant travellers;

"proprietor", in relation to an outwards duty free shop, means the holder of the warehouse licence that relates to the outwards duty free shop;

"relevant traveller" means a person:

(a) who intends to make an international flight, whether as a passenger on, or as a pilot or member of the crew of, an aircraft; or

(b) who intends to make an international voyage, whether as a passenger on, or as the master or a member of the crew of, a ship.

(2) Subject to the regulations (if any), a Collector may give permission, in accordance with subsection (3), for goods that are specified in the permission and are sold to a relevant traveller in an outwards duty free shop that is specified in the permission to be:

(a) delivered to the relevant traveller personally for export by him when making the international flight or voyage in relation to which he is a relevant traveller; and

(b) exported by the relevant traveller when making that flight or voyage without the goods having been entered for export;

and, subject to subsection (13), the permission is authority for such goods to be so delivered and so exported.

(3) Permission under subsection (2) is given in accordance with this subsection if it is in writing and is delivered to the proprietor of the outwards duty free shop to which the permission relates.

(4) Permission under subsection (2) may relate to particular goods, all goods, goods included in a specified class or classes of goods or goods other than goods included in a specified class or classes of goods.

(5) Without limiting the matters that may be prescribed in regulations referred to in subsection (2), those regulations:

(a) may prescribe circumstances in which permission under that subsection may be given;

(b) may prescribe matters to be taken into account by a Collector when deciding whether to give permission under that subsection; and

(c) may prescribe conditions to which a permission under that subsection is to be subject.

(6) A Collector may, when giving permission under subsection (2) or at any time while a permission under that subsection is in force, impose conditions to which the permission is to be subject, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.

(7) Without limiting the generality of paragraph (5) (c) or subsection (6), a condition referred to in that paragraph or that subsection to which a permission is to be subject may be:

(a) a condition to be complied with by the proprietor of the outwards duty free shop to which the permission relates or by relevant travellers to whom goods to which the permission relates are sold;

(b) a condition that the permission only applies to sales to relevant travellers who comply with a prescribed requirement or requirements, which may be, or include, a requirement that relevant travellers produce to the proprietor of the outwards duty free shop to which the permission relates or to a servant

or agent of that proprietor a ticket or other document, being a document approved by a Collector for the purposes of this paragraph, showing that the relevant traveller is entitled to make the international flight or voyage in relation to which he is a relevant traveller; or

(c) a condition that the proprietor of the outwards duty free shop to which the permission relates will keep records specified in the regulations and will notify a Collector of all sales made by him to which the permission applies.

(8) A condition imposed in respect of a permission under subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition takes effect when notice, in writing, of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the proprietor of the outwards duty free shop to which it relates, or at such later time (if any) as is specified in the notice, but does not have effect in relation to any goods delivered to a relevant traveller before the notice was served.

(9) A condition imposed in respect of a permission under paragraph (5) (c) or subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of a condition under subsection (6) may relate to all goods to which the permission relates or to particular goods to which the permission relates and may apply either generally or in particular circumstances.

(10) A permission under subsection (2) is subject to:

(a) the condition that the proprietor of the outwards duty free shop to which the permission relates will ensure that relevant travellers to whom goods are delivered in accordance with the permission are aware of any conditions of the permission with which they are required to comply; and

(b) the condition that that proprietor will provide a Collector with proof, in a prescribed way and within a prescribed time, of the export of goods delivered to a relevant traveller in accordance with the permission.

(11) If a person who is required to comply with a condition imposed in respect of a permission under subsection (2) fails to comply with the condition, he is guilty of an offence against this Act punishable upon conviction by a penalty not exceeding $5,000.

(12) Where the proprietor of an outwards duty free shop to which a permission under subsection (2) relates does not produce the proof required by paragraph (10) (b) that goods delivered by him to a relevant traveller in accordance with the permission have been exported by that traveller, the goods shall be deemed to have been

entered, and delivered, for home consumption by the proprietor, as owner of the goods, on the day on which the goods were delivered to that traveller.

(13) A Collector may, in accordance with the regulations, revoke a permission given under subsection (2) in relation to the sale of goods occurring after the revocation.

(14) Where a Collector makes a decision under subsection (2) refusing to give permission to the proprietor of an outwards duty free shop or under subsection (13) revoking a permission given under subsection (2), he shall cause to be served, either personally or by post, on the proprietor of the shop, a notice in writing setting out the Collector's findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

Inwards duty free shops

96B. (1) In this section:

"international flight" means a flight, whether direct or indirect, by an aircraft between a place outside Australia from which the aircraft took off and a place in Australia at which the aircraft landed;

"inwards duty free shop" means a warehouse in respect of which the relevant warehouse licence authorises the sale in the warehouse of airport shop goods to relevant travellers;

"proprietor", in relation to an inwards duty free shop, means the holder of the warehouse licence that relates to the inwards duty free shop;

"relevant traveller" means a person who:

(a) has arrived in Australia on an international flight, whether as a passenger on, or as the pilot or a member of the crew of, an aircraft; and

(b) has not been questioned, for the purposes of this Act, by an officer of Customs in respect of goods carried on that flight.

(2) A warehouse licence is not to authorise the sale in the warehouse of airport shop goods to relevant travellers unless the warehouse:

(a) is situated at an airport; and

(b) is so located that passengers on international flights who arrive at that airport would normally have access to the warehouse before being questioned for the purposes of this Act by officers of Customs.

(3) Subject to the regulations (if any), a Collector may give permission, in accordance with subsection (4), for airport shop goods that are specified in the permission and are sold to a relevant traveller in an inwards duty free shop that is specified in the permission to be:

(a) delivered to the relevant traveller; and

(b) taken by the relevant traveller for reporting to an officer of Customs doing duty in relation to clearance through Customs of the personal baggage of the relevant traveller.

(4) Permission under subsection (3) is given in accordance with this subsection if it is in writing and is delivered to the proprietor of the inwards duty free shop to which the permission relates.

(5) Without limiting the matters that may be prescribed in regulations referred to in subsection (3), those regulations:

(a) may prescribe circumstances in which permission under that subsection may be given;

(b) may prescribe matters to be taken into account by a Collector when deciding whether to give permission under that subsection; and

(c) may prescribe conditions to which a permission under that subsection is to be subject.

(6) A Collector may, when giving permission under subsection (3) or at any time while a permission under that subsection is in force, impose conditions to which the permission is to be subject, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts, and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.

(7) Without limiting the generality of paragraph (5) (c) or subsection (6), a condition referred to in that paragraph or that subsection to which a permission is to be subject may be:

(a) a condition to be complied with by the proprietor of the inwards duty free shop to which the permission relates or by relevant travellers to whom goods to which the permission relates are sold; or

(b) a condition that the proprietor of the inwards duty free shop to which the permission relates will keep records specified in the regulations.

(8) A condition imposed in respect of a permission under subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition takes effect when notice in writing of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the proprietor of the

inwards duty free shop to which it relates, or at such later time (if any) as is specified in the notice, but does not have effect in relation to any goods delivered to a relevant traveller before the notice was served.

(9) A condition imposed in respect of a permission under paragraph (5) (c) or subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of a condition under subsection (6) may relate to all goods to which the permission relates or to particular goods to which the permission relates and may apply either generally or in particular circumstances.

(10) A permission under subsection (3) is subject to the condition that the proprietor of the inwards duty free shop to which the permission relates will ensure that relevant travellers to whom goods are delivered in accordance with the permission are aware of any conditions of the permission with which they are required to comply.

(11) If a person who is required to comply with a condition imposed in respect of a permission under subsection (3) fails to comply with the condition, the person is guilty of an offence against this Act punishable upon conviction by a fine not exceeding $5,000.

(12) A Collector may, in accordance with the regulations, revoke a permission given under subsection (3) in relation to the sale of goods occurring after the revocation.

(13) Where a Collector makes a decision under subsection (3) refusing to give permission to the proprietor of an inwards duty free shop or a decision under subsection (12) revoking a permission given under subsection (3), the Collector shall cause to be served, either personally or by post, on the proprietor of the shop, a notice in writing setting out the Collector's findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

Goods for public exhibition

97. **(1)** Subject to subsection (3), 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 subsection (1) shall specify the period during which the owner of the relevant goods may keep the goods outside the warehouse.

(3) Permission under subsection (1) for the taking of warehoused goods out of a warehouse shall not be granted 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.

Goods blended or packaged in warehouse

98. Subject to the regulations, where a warehouse licence authorizes blending or packaging in the warehouse, goods may be blended or packaged in the warehouse in accordance with, and subject to any relevant conditions of, the licence, and goods so blended or packaged 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

99. (1) Warehoused goods may be entered:

(a) for home consumption; or

(b) for export.

(2) Subject to sections 69 and 70, warehoused goods shall not be delivered for home consumption unless:

(a) they have been entered for home consumption; and

(b) an authority to deal with the goods in accordance with that entry has been given under section 71B.

(3) Subject to section 96A, warehoused goods shall not be taken from the warehouse for export unless:

(a) they have been entered for export; and

(b) an authority to deal with the goods in accordance with that entry has been given under section 114C.

Constructive warehousing

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 subsection (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: $1,000.

Delivery of warehousing authority

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.

Penalty: $1,000.

Holder of licence to inform Collector of certain matters

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.

(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: $1,000.

PART VA—SPECIAL PROVISIONS RELATING TO SPIRITS

Interpretation

103. In this Part:

"bulk container" means a container that has the capacity to have packaged in it more than 2 litres of spirit;

"container" means any article capable of holding liquids;

"spirit" means goods described in a sub-item between sub-items 2 (A) and 2 (H), inclusive, of the Schedule to the *Excise Tariff Act 1921*.

Spirit imported in bulk must be entered for warehousing or transhipment

104. All spirit imported into Australia in bulk containers must initially either be entered for warehousing under paragraph 68 (2) (b) or for transhipment under paragraph 68 (2) (c).

Certain spirit not to be entered for home consumption in bulk containers without CEO's approval

105. (1) Spirit that has been imported into Australia in bulk containers and entered for warehousing must not be entered for home consumption unless:

(a) the spirit has been repackaged in containers other than bulk containers; or

(b) the CEO, by notice in writing, permits the spirit to be entered for home consumption packaged in bulk containers.

(2) The CEO must not permit spirit that has been imported into Australia in bulk containers and initially entered for warehousing to be subsequently entered for home consumption purposes in bulk containers unless:

(a) the containers have a capacity of not more than 20 litres or such other volume as is from time to time prescribed; and

(b) the CEO is satisfied that the spirit will not be repackaged in any other container for the purposes of retail sale.

PART VI—THE EXPORTATION OF GOODS

Division 1—Prohibited exports

Prohibited exports

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

(2) The power conferred by subsection (1) may be exercised:

(a) by prohibiting the exportation of goods absolutely;

(aa) by prohibiting the exportation of goods in specified circumstances;

(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.

(2A) Without limiting the generality of paragraph (2) (c), the regulations:

(aa) may identify the goods to which the regulations relate by reference to their inclusion:

(i) in a list or other document formulated by a Minister and published in the *Gazette* or otherwise; or

(ii) in that list or other document as amended by the Minister and in force from time to time; and

(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 subsection (2B) in respect of the failure.

(2AA) Where a Minister makes an amendment to a list or other document:

(a) that is formulated and published by the Minister; and

(b) to which reference is made in regulations made for the purposes of paragraph (2) (c);

the amendment is a disallowable instrument within the meaning of section 46A of the *Acts Interpretation Act 1901*.

(2B) Where a licence or permission granted, after the commencement of this subsection, 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 $10,000; or

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

(2AB) It is a condition of any licence or permission to export goods, being a licence or permission granted under paragraph (2) (c) by the Minister for Defence or an authorised person within the meaning of subregulation 13B (1) or 13E (1) of the Customs (Prohibited Exports) Regulations after the commencement of this subsection, that the Minister for Defence may, at any time, by notice:

(a) published:

(i) in the *Gazette*; and

(ii) in each State and internal Territory, in a newspaper circulating throughout that State or Territory; and

(b) in writing given to the holder of the licence or permission;

inform the holder that, with effect from a day specified in the notice, all goods to which the licence or permission relates, or such kinds of those goods as are specified in the notice, shall not be exported to a specified place because in the opinion of the Minister for Defence:

(c) a situation in that place; or

(d) a situation in another place to which there is a reasonable likelihood that such goods will be re-exported from that specified place;

makes the exportation of such goods from Australia contrary to the national interest, and, where the Minister for Defence gives such a notice, the authority of the holder to export such goods to that specified place shall be taken to have been withdrawn until the Minister for Defence, by further notice in writing given to the holder, revokes the original notice.

(2AC) The day specified in a notice under subsection (2AB) shall be a day not earlier than the day on which the notice is published in the *Gazette* under subparagraph (2AB) (a) (i).

(2AD) Any failure to comply with the requirements of paragraph (2AB) (b) in relation to a notice under subsection (2AB) does not affect the validity of the notice.

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

Division 2—Entry and clearance of goods for export

Entry of goods for export

113. (1) Subject to this Act, the owner of goods intended for export:

(a) must enter the goods for export; and

(b) must not allow the goods:

(i) if the goods are a ship or aircraft that is to be exported otherwise than in a ship or aircraft—to leave the place of exportation; or

(ii) if the goods are other goods—to be loaded on the ship or aircraft in which they are to be exported;

unless an authority to deal with the goods has been given under section 114C.

Penalty: $5,000.

(2) Subsection (1) does not apply to:

(a) goods that are accompanied or unaccompanied personal or household effects of a passenger in, or a member of the crew of, a ship or aircraft; and

(b) goods, other than prescribed goods, included in a consignment that is consigned through the Post Office by one person to another and that has an FOB value not exceeding $2,000 or such other amount as is prescribed; and

(c) goods, other than prescribed goods, included in a consignment to which a single export statistical item under the Australian Harmonised Export Commodity Classification applies, being a consignment that is exported by ship or aircraft and that has an FOB value not exceeding $500 or such other amount as is prescribed; and

(d) containers that are the property of a person carrying on business in Australia and that are exported on a temporary basis to be re-imported, whether empty or loaded; and

(e) containers that are intended for use principally in the international carriage of goods, other than containers that, when exported from Australia, cease, or are intended to cease, to be the property of a natural person resident, or a body corporate incorporated, in Australia; and

(f) goods that, under the regulations, are exempted from this section, either absolutely or on such terms and conditions as are specified in the regulations.

(3) For the purposes of paragraph (2) (a), goods:

(a) in quantities exceeding what could reasonably be expected to be required by a passenger or member of the crew of a ship or aircraft for his or her own use; or

(b) that are, to the knowledge or belief of a passenger or a member of the crew of a ship or aircraft, to be sold, or used in the course of trading, outside Australia;

are not included in the personal or household effects of that passenger or crew member.

What is an export entry?

114. **(1)** An export entry is a communication to Customs of information concerning goods intended for export that is effected either by document or by computer.

(2) A documentary export entry must:

(a) be made by the owner of the goods concerned; and

(b) be communicated to Customs by sending or giving it to an officer doing duty in relation to export entries; and

(c) be in an approved form; and

(d) contain such information as is required by the form; and

(e) be signed in the manner specified in the form.

(3) A computer export entry must:

(a) be transmitted by a registered EXIT user as the owner, or on behalf of the owner, of the goods concerned; and

(b) be transmitted to Customs using the EXIT computer system; and

(c) be signed by transmitting, in relation to the entry, the registered EXIT user's identifying code; and

(d) communicate such information as is set out in an approved statement.

(4) Despite the fact that any law of the Commonwealth, including this Act, provides that the exportation of particular goods from Australia is prohibited unless a permission (however it is described) to export those goods is produced to an officer of Customs, that obligation will be taken to have been complied with if the permission obtained in respect of those goods is adequately identified in the information communicated to Customs in an export entry relating to those goods.

(5) Nothing in subsection (4) affects any power of an officer of Customs, under this Act, to require the production of such permission.

(6) When, in accordance with section 119D, an export entry is taken to have been communicated to Customs, the goods to which the entry relates are taken to have been entered.

Information and documents relating to export entries etc.

114A. (1) Without limiting the generality of section 114C, where goods have been entered under section 114, authority to deal with the goods in accordance with the entry may be refused until an officer doing duty in relation to export entries has verified particulars of the goods shown in the entry:

(a) by reference to information contained in commercial documents relating to the goods that have been given to Customs by the owner of the goods on, or at any time after, the communication of the entry to Customs; or

(b) by reference to information, in writing, in respect of the goods that has been so given to Customs.

(2) An officer doing duty in relation to export entries may, by notice in writing, require the owner of goods entered under section 114:

(a) to deliver to the officer the commercial documents in respect of the goods that are in the owner's possession or under the owner's control (including any such documents that had previously been delivered to an officer and had been returned to the owner); or

(b) to deliver to the officer such information, in writing, relating to the goods, 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) An officer doing duty in relation to export entries may ask the owner of goods entered under section 114 and, if another person communicated the entry on behalf of the owner, that other person, any questions relating to the goods.

(4) An officer doing duty in relation to export entries may require from the owner of any goods entered under section 114 proof of the particulars shown in the entry by declaration or the production of documents.

(5) Where:

(a) the owner of goods has been required to deliver documents or information under subsection (2) in relation to the goods; or

(b) the owner of, or person giving an entry in respect of goods has been asked a question under subsection (3) in respect of the goods; or

(c) the owner of goods has been required under subsection (4) to produce proof of a matter in respect of the goods;

authority to deal with the relevant goods in accordance with the entry must not be granted unless the requirement has been complied with or revoked, the question has been answered or withdrawn or the requirement has been complied with or withdrawn, as the case may be.

(6) Subject to section 215, where a person delivers a commercial document to an officer doing duty in relation to export entries under this section, the officer must deal with the document and then return the document to that person.

Confirming exporters

114B. (1) A person who:

(a) proposes to communicate an export entry relating to particular goods or is likely to communicate, from time to time, export entries in relation to goods of a particular kind; and

(b) will be unable to include in that export entry or those export entries particular information in relation to those goods because the information cannot be ascertained until after the exportation of those goods;

may apply to the CEO for confirming exporter status in respect of that information and those goods.

(2) An application under subsection (1) must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such particulars as are required by the form including the reasons the information referred to in subsection (1) cannot be ascertained before exportation.

(3) Where a person applies for confirming exporter status in respect of particular information and particular goods or goods of a particular kind, the CEO must:

(a) if the CEO is satisfied that the information cannot be ascertained before exportation—grant the applicant that status by signing a notice stating:

(i) that the applicant is granted that status in respect of that information and those goods; and

(ii) that the grant is on such conditions as are specified in the notice; or

(b) if the CEO is not so satisfied—refuse to grant the applicant that status by signing a notice stating that the CEO has refused to grant the applicant that status and setting out the reasons for the refusal.

(4) A grant of confirming exporter status has effect from the day on which the relevant notice is signed.

(5) Without limiting the generality of the conditions to which a grant of confirming exporter status may be subject, those conditions must be expressed to include:

(a) a requirement that the appropriate confirming exporter status will be specified in any export entry relating to the goods in respect of which the status was granted where the confirming exporter proposes to rely on that status; and

(b) a requirement that full details of the information in respect of which the status was granted will be provided as soon as practicable after exportation and not later than the time the CEO indicates in the notice granting the status; and

(c) a requirement that, if information in respect of which the status was granted becomes, to the knowledge of the confirming exporter, able to be ascertained before the exportation of goods in respect of which the status was granted, the confirming exporter will notify the CEO forthwith.

(6) Where the CEO is satisfied that information in respect of which confirming exporter status was granted is now able to be ascertained before exportation, he or she must sign a notice in writing:

(a) cancelling the confirming exporter status forthwith; or

(b) modifying the confirming exporter status so that it no longer relates to that information.

(7) Where a person granted a confirming exporter status is respect of information and goods fails, without reasonable excuse, to comply with a condition to which the grant is subject, the person is guilty of an offence.

Penalty: $1,000.

(8) Where:

(a) a person who is a confirming exporter in respect of information and goods of a particular kind is convicted of an offence against subsection (7); or

(b) the CEO becomes satisfied that a person who is such a confirming exporter has failed to comply with a condition of a grant of confirming exporter status although no proceedings for an offence against subsection (7) have been brought against the person;

the CEO may:

(c) cancel that person's status in respect of that information and those goods; or

(d) modify that person's status so that it no longer relates to specified information or goods or so that the conditions to which it is subject are altered in a specified respect;

by signing a notice stating that that status has been so cancelled or modified and setting out the reasons for that cancellation or modification.

(9) A cancellation or modification of the confirming exporter status of a person has effect on the day the relevant notice was signed.

(10) The CEO must, as soon as practicable after signing a notice under subsection (3), (6) or (8), serve a copy of the notice on the person concerned but a failure to do so does not alter the effect of the notice.

Authority to deal with goods entered under section 114

114C. (1) Subject to this Act, where an entry in respect of goods has been sent, given or transmitted to Customs, the Customs must give an export entry advice, in a manner and form specified in the regulations, that constitutes either an authority to deal with the goods to which the entry relates in accordance with the entry or a refusal to provide such an authority.

(2) Without limiting the generality of subsection (1), regulations specifying the form of an export entry advice must include in the information set out in that advice a number, called the export entry advice number, by which the advice can be identified.

(3) An authority under this section to deal with goods may be expressed to be subject to a condition that a specified permission for the goods to be dealt with (however it is described) be obtained under another law of the Commonwealth.

(4) Where an authority under this section to deal with goods is expressed to be subject to a condition that a specified permission be obtained, the authority is taken not to have been given until the permission has been obtained.

(6) An officer may, at any time before goods authorised to be dealt with in accordance with an export entry are so dealt with, cancel that authority:

(a) if the authority was given in respect of a documentary entry—by signing a notice stating that the authority is cancelled and setting out the reasons for that cancellation and serving a copy of that notice on the person who made the entry, or, if that person does not have possession of the goods, on the person who has possession of the goods; and

(b) if the authority was given in respect of a computer entry:

(i) by transmitting to the registered EXIT user to whom the authority was given a cancellation notice setting out the same particulars as are required to be included in a notice referred to in paragraph (a); or

(ii) by signing and serving a notice of the kind referred to in paragraph (a);

and the cancellation has effect from the moment the notice is served or transmitted as the case requires.

Goods to be dealt with in accordance with export entry

114D. (1) The owner of goods in respect of which an export entry has been communicated to Customs:

(a) must, as soon as practicable after an authority to deal with the goods is granted, deal with the goods in accordance with the entry; and

(b) must not remove any of the goods from the possession of the person to whom they are delivered or of any person to whom they are subsequently passed in accordance with the entry unless the entry has been withdrawn, or withdrawn insofar as it applies to those goods.

Penalty: $1,000.

(2) Where excisable goods on which excise duty has not been paid have been delivered to a place prescribed for the purposes of paragraph 30 (d) of this Act and the export entry that applies to those goods is withdrawn, or withdrawn insofar as it applies to those goods, then:

(a) despite any implication to the contrary in subsection (1), the goods become, on the communication to Customs of the withdrawal, goods under Customs control under section 61 of the *Excise Act 1901*; and

(b) the withdrawal constitutes a permission, under section 61A of that Act, to move the goods back to the place from which they were first moved in accordance with the entry.

(3) Where goods are goods on which Customs duty is payable but has not been paid and the export entry that applies to those goods is withdrawn, or withdrawn insofar as it applies to those goods, then:

(a) despite any implication to the contrary in subsection (1), the goods remain under Customs control; and

(b) the withdrawal constitutes a permission, under section 71E of this Act, to move the goods back to the place from which they were first moved in accordance with the entry.

Goods not to be taken on board without authority to deal

115. The owner of a ship or aircraft must not permit goods required to be entered for export to be taken on board the ship or aircraft for the purpose of exportation unless an authority to deal with the goods has been granted under section 114C.

Penalty: $10,000.

What happens when goods are not dealt with in accordance with an export entry?

116. (1) Where:

(a) goods are entered for export under section 114; and

(b) none of the goods or some only of the goods have been exported in accordance with the entry at the end of a period of 30 days after the intended day of exportation notified in the entry;

the authority to deal with the goods in accordance with the entry, so far as it relates to goods not exported before the end of the period, is, at the end of the period, taken to have been revoked.

(2) Where an authority to deal with goods entered under section 114 is taken, under subsection (1), to have been totally or partially revoked, the owner of the goods must, within 7 days after the end of the period referred to in that subsection:

(a) if the authority to deal was taken to be totally revoked—withdraw the entry relating to the goods; and

(b) if the authority to deal was taken to be partially revoked—amend the entry so that it relates only to those goods exported before the end of the period.

Penalty: $5,000.

(3) Where the owner of goods entered under section 114 amends the original entry in accordance with paragraph (2) (b), the owner is, in accordance with subsection 119C (1), taken to have withdrawn the original entry but this Act has effect:

(a) as if the amended entry had been communicated to Customs under section 114; and

(b) as if an authority to deal with the goods to which the amended entry relates in accordance with the amended entry had been granted under section 114C;

on the day, or the respective days, on which the original entry was communicated and the original authority to deal was granted.

Security

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

Submanifests may be prepared before goods are exported

117A. **(1)** A person involved in the consolidation of cargo for exportation by a ship or aircraft must, for the purpose of facilitating the obtaining of a Certificate of Clearance in respect of that ship or aircraft so as to enable that exportation, prepare and communicate to Customs, either by document or by computer, a submanifest in respect of those goods.

(2) A documentary submanifest must:

(a) be communicated to Customs by sending or giving it to an officer doing duty in respect of the clearance of ships or aircraft; and

(b) be in an approved form; and

(c) contain such information as is required by the form; and

(d) be signed by the person compiling the submanifest.

(3) A computer submanifest must:

(a) be transmitted by a registered EXIT user as, or on behalf of, the person referred to in subsection (1); and

(b) be transmitted to Customs using the EXIT computer system; and

(c) be signed by transmitting, in relation to the submanifest, the registered user's identifying code; and

(d) communicate such information as is set out in an approved statement.

(4) When an officer receives a documentary submanifest from the person who compiled it, he or she must acknowledge its receipt by giving the compiler a notice in writing specifying a submanifest number for inclusion in any outward manifest purportedly relating to the goods concerned.

(5) When a computer submanifest is transmitted to the Customs, the Customs must transmit to the compiler of the submanifest a notice acknowledging its receipt and giving the compiler a submanifest number for inclusion in any outward manifest purportedly relating to the goods concerned.

Certificate of Clearance

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

Penalty: $50,000.

Requisites for obtaining Certificate of Clearance

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

(a) the master or owner of the ship or the pilot or owner of the aircraft must communicate to Customs, by document or by computer, an outward manifest:

(i) specifying all of the goods, other than goods prescribed for the purposes of section 120, on board the ship or aircraft; or

(ii) if there are no goods of the kind to which subparagraph (i) applies on board the ship or aircraft—making a statement to that effect; and

(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) A documentary outward manifest must:

(a) be communicated to Customs by sending or giving it to an officer doing duty in respect of the clearance of ships or aircraft; and

(b) be in an approved form; and

(c) contain such information as is specified in the form; and

(d) be signed in the manner specified in the form.

(2A) A computer outward manifest must:

(a) be transmitted by a registered EXIT user as, or on behalf of, the master or owner of the ship or the pilot or owner of the aircraft concerned; and

(b) be transmitted to Customs using the EXIT computer system; and

(c) be signed by transmitting, in relation to the outward manifest, the registered user's identifying code; and

(d) communicate such information as is set out in an approved statement.

(2B) If, within 24 hours after an outward manifest was communicated to Customs, a Certificate of Clearance has not been given to the master of the ship or pilot of the aircraft concerned, the master or pilot may, at any time within 14 days after the end of that period, apply to the CEO for a Certificate of Clearance and the decision of the CEO on the application is final and conclusive.

(3) Where, in pursuance of the last preceding subsection, the CEO 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, 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 subsection 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.

Withdrawal of entries, submanifests and manifests

119A. (1) At any time after an export entry, a submanifest or an outward manifest is communicated to Customs and before the goods to which it relates are exported, a withdrawal of the entry, submanifest or manifest may be communicated to Customs by document or computer.

(2) A documentary withdrawal of an entry, submanifest or manifest must:

(a) be communicated by the person by whom, or on whose behalf, the entry, submanifest or manifest was communicated; and

(b) by communicating to Customs:

(i) if it is a withdrawal of an entry—by giving it to an officer doing duty in relation to export entries; and

(ii) if it is a withdrawal of a submanifest or manifest—by giving it to an officer doing duty in relation to the clearance of ships or aircraft; and

(c) be in an approved form; and

(d) contain such information as is required by the form; and

(e) be signed in a manner specified in the form.

(3) A computer withdrawal of an entry, submanifest or manifest must:

(a) be transmitted by a registered EXIT user as or on behalf of, the person by whom, or on whose behalf, the entry, submanifest or manifest was communicated; and

(b) be transmitted to Customs, using the EXIT computer system; and

(c) be signed by transmitting, in relation to the withdrawal, the registered user's identifying code; and

(d) communicate such information as is set out in an approved statement.

(4) A withdrawal of an entry, submanifest or manifest has effect when, in accordance with section 119D, it is communicated to Customs.

Effect of withdrawal

119B. (1) When a withdrawal of an export entry takes effect, any authority to deal with the goods to which the entry relates is revoked.

(2) Despite the withdrawal of an entry, submanifest or manifest:

(a) a person may be prosecuted in respect of the entry, submanifest or manifest; and

(b) a penalty may be imposed on a person who is convicted of an offence in respect of the entry, submanifest or manifest;

as if it had not been withdrawn.

(3) The withdrawal of a documentary entry, documentary submanifest or documentary manifest the original of which was sent or given to an officer does not entitle the person who communicated it to have it returned.

Change of computer entries, submanifests and manifests treated as withdrawals

119C. (1) Where a person who has communicated a computer export entry changes information included in that entry, the person is taken, at the time when an export entry advice is transmitted in respect of the altered entry, to have withdrawn the entry as it previously stood.

(2) Where a person who has communicated a computer submanifest or a computer outward manifest changes information included in that submanifest or manifest, the person is taken, at the time when an acknowledgment of the altered submanifest or altered manifest, as the case requires, is transmitted, to have withdrawn the submanifest or manifest as it previously stood.

Notification of export entries, submanifests, manifests and withdrawals

119D. (1) For the purposes of this Act, a documentary export entry, a documentary submanifest, a documentary outward manifest, or a documentary withdrawal of such an entry, submanifest or manifest,

may be sent to the officer referred to in subsection 114 (2), 117A (2), 119 (2) or 119A (2), as the case requires, in any manner prescribed and, when so sent, is taken to have been communicated to Customs at such time, and in such circumstances, as are prescribed.

(3) For the purposes of this Act, a computer export entry, a computer submanifest, a computer outward manifest, or a computer withdrawal of such an entry, submanifest or manifest, as the case requires, that is transmitted to Customs using the EXIT computer system is taken to have been communicated to Customs when an export entry advice or an acknowledgment of receipt of the submanifest, manifest or withdrawal is transmitted to the registered EXIT user whose identifying code was transmitted in relation to the entry, submanifest, manifest or withdrawal.

Shipment of goods

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:

(a) goods which are specified or referred to in the Outward Manifest; and

(b) goods prescribed for the purpose of this section.

Penalty: $10,000.

Time of clearance

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.

Division 3—The use of computers for export entry and clearance purposes

Registered EXIT users

122A. (1) To communicate with Customs by computer for a purpose identified in Division 2, a person must be a registered EXIT user.

(2) A person wishing to become a registered EXIT user may apply to the CEO to be so registered.

(3) An application must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such information as is required by the form.

(4) The CEO may require an applicant for registration to give such additional information as the CEO considers necessary for the purposes of this Act and may refuse to register the person until the information is given to the satisfaction of the CEO.

(5) Where an application is made to the CEO under this section, the CEO must, having regard to that application and where additional information is supplied in response to a request under subsection (4), to that additional information:

(a) register the applicant as a registered EXIT user by signing a notice stating that the applicant is a registered EXIT user; or

(b) refuse to register the applicant as a registered EXIT user by signing a notice stating that the CEO has refused to register the applicant and setting out the reasons for the refusal.

(6) Where the CEO registers a person as a registered EXIT user, the registration has effect from the day on which the relevant notice was signed.

(7) Each registered EXIT user must, as soon as practicable after registration, enter into an agreement with Customs, setting out the terms and conditions of computer access to Customs for the purpose of communications relating to the exportation of goods including:

(a) a condition that the user will use computer facilities of a kind specified in the agreement for all computer communications with Customs relating to export entries; and

(b) a condition that the user, when assigned an identifying code by the CEO, will ensure the security of the code in a manner indicated in the agreement.

(8) Where a registered EXIT user enters into an EXIT agreement, the CEO must forthwith allocate an identifying code to the user.

(9) Where, at any time, the CEO becomes satisfied that a person who is a registered EXIT user has failed to comply:

(a) with an obligation imposed on the user under this Act; or

(b) with a term of the applicable EXIT agreement;

the CEO may cancel the registration of the registered EXIT user by signing a notice stating that the registration has been cancelled and setting out the reasons for that cancellation.

(10) The cancellation of the registration of a person as a registered EXIT user has effect from the day the relevant notice was signed.

(11) The CEO must, as soon as practicable after signing a notice under subsection (5) or (9), serve a copy of the notice on the person concerned but a failure to do so does not alter the effect of the notice.

Unauthorised use of registered EXIT user's identifying code

122B. Where a computer export entry, a computer submanifest, a computer outward manifest or a withdrawal of such an entry, submanifest or manifest is communicated to Customs using a registered EXIT user's identifying code:

(a) without the authority of the user to whom the code was assigned; and

(b) before notification to Customs by the user of a possible breach of security;

that entry, submanifest, manifest or withdrawal will be, for all purposes, but subject to any evidence by the user to the contrary, taken to have been communicated by the user.

What happens if the EXIT computer system is down?

122C. (1) Where:

(a) because the EXIT computer system is inoperative, a registered EXIT user cannot transmit a computer export entry to Customs or Customs cannot transmit an export entry advice to the user; and

(b) the exportation of the goods for which the entry is required could otherwise be delayed;

the user may contact an officer doing duty in relation to entries as specified in the applicable EXIT agreement; and

(c) give the officer such of the information that would ordinarily be contained in an export entry as the officer requests; and

(d) request the officer to give him or her a provisional clearance of the goods to which the export entry relates.

(2) Where an application is made to an officer in respect of particular goods in the circumstances set out in subsection (1), he or she must, having regard to the information supplied:

(a) if he or she is satisfied that, were a computer export entry in respect of those goods able to be processed in the normal manner, the goods would be cleared for export in an export entry advice—give the registered EXIT user concerned a provisional clearance containing similar details to those that would be given in an export entry advice constituting an authority to deal with the goods; and

(b) if he or she is not so satisfied—refuse to give such a provisional clearance.

(3) Where:

(a) a provisional clearance is given in respect of particular goods; and

(b) the goods are exported before an export entry advice is given in respect of the goods;

the goods are treated, for the purposes of this Part, as if the provisional clearance were an export entry advice constituting an authority to deal with the goods in the manner set out in the clearance, whether or not such an advice is ultimately given on an acquittal of the clearance under section 122D.

Acquittal of provisional clearance

122D. **(1)** Where a registered EXIT user is given a provisional clearance in respect of particular goods, the user must, within 48 hours after the EXIT computer system is restored to operability, whether or not the goods have been exported:

(a) withdraw any previous computer export entry in respect of the goods that was not able to be processed while the system was inoperable; and

(b) transmit a computer export entry in respect of the goods; and

(c) include in the information transmitted in the entry, particulars of the provisional clearance in respect of the goods.

Penalty: $500.

(2) Where a computer export entry is communicated to Customs in respect of goods in relation to which a provisional clearance was issued, any authority to deal with the goods in accordance with that entry is taken to have been issued at the time when the provisional clearance was given.

Third party inquiries

122E. **(1)** Any person who, to the satisfaction of an officer of Customs:

(a) is involved in the preparation of a submanifest or manifest in respect of particular goods; or

(b) for any other reason, has a legitimate need to know of the existence of an authority to deal in respect of particular goods;

may request Customs to confirm the existence of such an authority in respect of all or any of those goods.

(2) Any person who, to the satisfaction of an officer of Customs, is involved in the preparation of a manifest in respect of particular goods may request Customs to confirm:

(a) the existence of a submanifest in respect of any of those goods; and

(b) the existence of an authority to deal in respect of any of the goods covered by the submanifest.

(3) A request under subsection (1) must quote the export entry advice number of any authority to deal in respect of which confirmation is sought under that section.

(4) A request under subsection (2) must quote the submanifest number of any manifest in relation to which a confirmation is sought under that subsection.

Division 4—Exportation procedures after Certificate of Clearance issued

Ship to bring to and aircraft to stop at boarding stations

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.

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.

Penalty: $500.

Master or pilot to account for missing goods

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 on board his ship or aircraft.

Penalty: $10,000.

Goods exported to be landed at proper destination

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

Penalty: $25,000.

Certificate of landing

126. If required by the CEO 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.

Division 5—Miscellaneous

Export of installations

126A. **(1)** Where an installation ceases to be part of Australia, the installation and any goods on the installation at the time when it ceases to be part of Australia shall, for the purposes of the Customs Acts, be taken to have been exported from Australia.

(2) Where:

(a) a resources installation is taken from a place in Australia into Australian waters for the purpose of becoming attached to the Australian seabed; or

(b) a sea installation is taken from a place in Australia into an adjacent area or into a coastal area for the purpose of being installed in that area;

the installation and any goods on the installation shall not be taken, for the purposes of the Customs Acts, to have been exported from Australia.

Export of goods from installations

126B. For the purposes of the Customs Acts, where goods are taken from an installation that is deemed to be part of Australia under section 5C for the purpose of being taken to a place outside Australia, whether directly or indirectly, the goods shall be deemed to have been exported from Australia at the time when they are so taken from the installation.

Size of exporting vessel

126C. Goods subject to the control of Customs must not be exported in a ship of less than 50 tons gross registered without the written permission of the CEO.

Penalty: $1,000.

PART VII—SHIPS' STORES AND AIRCRAFT'S STORES

Use of ships' and aircraft's stores

127. Ships' stores and aircraft's stores, whether shipped in a place outside Australia 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.

Penalty: $2,000.

Unshipment of ships' and aircraft's stores

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 transhipment to another ship or aircraft.

Ships' and aircraft's stores not to be taken on board without approval

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.

(2) Approval under the last preceding subsection 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 Acts.

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

(a) he is guilty of an offence against this Act punishable, upon conviction, by a penalty not exceeding $2,000; 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 229 (1) (g), 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 subsection (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.

Ship's and aircraft's stores exempt from duty

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

Entry not required for ship's or aircraft's stores

130A. 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 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.

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

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 master or owner of a ship, if so directed by an officer, must give to a Collector a return, in accordance with the approved form, relating to the ship's stores of the ship and to goods taken on board the ship as ship's stores.

(2AA) The return referred to in subsection (2) must include details of any:

(a) drugs that are prohibited imports; and

(b) firearms; and

(c) ammunition;

that are ship's stores of the ship or have been taken on board the ship as ship's stores.

(2A) The owner of an aircraft, or, if so directed by an officer, the pilot of an aircraft, shall:

(a) whenever so directed by an officer, give to a Collector particulars of:

(i) the prescribed aircraft's stores of the aircraft; and

(ii) goods taken on board the aircraft as prescribed aircraft's stores; and

(b) immediately before the departure of the aircraft from Australia, give to a Collector a return, in accordance with the prescribed form, relating to drugs that are prohibited imports and:

(i) are aircraft's stores of the aircraft; or

(ii) have been taken on board the aircraft as aircraft's stores.

(3) A person who fails to comply with a direction under subsection (2) or (2A) is guilty of an offence punishable upon conviction by a penalty not exceeding $2,000.

(4) In subsection (2A), **"prescribed aircraft's stores"** means prescribed aircraft's stores within the meaning of section 129.

Interpretation

130C. In this Part:

"aircraft" does not include:

(a) an aircraft that is not currently engaged in making international flights; or

(b) an aircraft that is currently engaged in making international flights but is about to make a flight other than an international flight;

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

"international flight", in relation to an aircraft, means a flight, whether direct or indirect, between:

(a) a place in Australia from which the aircraft takes off and a place outside Australia at which the aircraft lands or is intended to land; or

(b) a place outside Australia from which the aircraft takes off and a place in Australia at which the aircraft lands;

"international voyage", in relation to a ship, means a voyage, whether direct or indirect, between a place in Australia and a place outside Australia;

"ship" does not include:

(a) a ship that is not currently engaged in making international voyages; or

(b) a ship that is currently engaged in making international voyages but is about to make a voyage other than an international voyage;

"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

Fish caught by Australian ships

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 be subject to the control of the Customs.

Special provisions for goods taken to Area A of the Zone of Cooperation

131AA. (1) Goods taken out of Australia for the purpose of being taken to a resources installation in Area A and there used for a purpose related to petroleum operations are not liable to any duty of Customs in relation to the taking of the goods out of Australia.

(2) Goods brought into Australia for the purpose of being taken to a resources installation in Area A and there used for a purpose related to petroleum operations are not liable to any duty of Customs in relation to the bringing of the goods into Australia.

(3) In this section, **"petroleum operations"** has the same meaning as in the Treaty set out in the Schedule to the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990*.

Liability of Commonwealth authorities to pay duties of Customs

131B. (1) Subject to subsection (2), to the extent that, but for this section, an Act (whether enacted before, on or after 1 July 1987) would:

(a) exempt a particular Commonwealth authority from liability to pay duties of Customs; or

(b) exempt a person from liability to pay duties of Customs in relation to goods for use by a particular Commonwealth authority;

then, by force of this section, the exemption has no effect.

(2) Subsection (1) does not apply to an exemption if:

(a) the provision containing the exemption is enacted after 30 June 1987; and

(b) the exemption expressly refers to duties of Customs (however described).

Rate of import duty

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.

(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.

(3) For the purposes of this section, if an entry for home consumption in respect of goods is withdrawn under section 71F and the goods are subsequently entered for warehousing, the entry for home consumption is to be disregarded.

Prepayment of duty

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.

Declared period quotas—effect on rates of import duty

132B. (1) If at any time the CEO 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 CEO 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.

(2) The CEO shall, in a notice under subsection (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 CEO makes a declaration under subsection (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 subsection (4) of this section, the order comes into force forthwith.

(4) 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 CEO may, before authority to deal with the goods is given under section 71B and whether or not the declared period has expired, make, under subsection (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, 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 subsection (3), or revoking or varying a quota order under section 132C, with respect to a person, the CEO 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 CEO considers relevant, the person has entered for home consumption, and to such other matters as the CEO 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) 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 authority to deal with the goods is given under section 71B, 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 subsection (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.

Revocation and variation of quota orders

132C. (1) The CEO 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 CEO 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.

(4) Subject to subsection (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 CEO 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 etc.

132D. The CEO 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.

Export duties

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.

(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.

(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.

Weights and measures

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.

Proportion

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.

Manner of fixing duty

136. Whenever goods (other than beer that is entered for home consumption after 31 January 1989) 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.

Manner of determining volumes of, and fixing duty on, beer

137. (1) For the purposes of the Customs Acts in their application to beer that is entered for home consumption after 31 January 1989 in a bulk container, the container in which the beer is packaged shall be treated as containing:

(a) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered before 1 July 1991 and the actual volume of the contents of the container does not exceed 101.5% of the nominated volume—the nominated volume;

(b) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered before 1 July 1991 and the actual volume of the contents of the container exceeds 101.5% of the nominated volume—a volume equal to the sum of:

(i) the nominated volume; and

(ii) the volume by which the actual volume of the contents of the container exceeds 101.5% of the nominated volume;

(c) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered after 30 June 1991 and the actual volume of the contents of the container does not exceed 101% of the nominated volume—the nominated volume;

(d) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered after 30 June 1991 and the actual volume of the contents of the container exceeds 101% of the nominated volume—a volume equal to the sum of:

(i) the nominated volume; and

(ii) the volume by which the actual volume of the contents of the container exceeds 101% of the nominated volume; or

(e) if the volume of the contents of the container is not nominated for the purpose of the entry—the actual volume of the contents of the container;

and duty on beer so entered shall be fixed accordingly.

(2) For the purposes of the application of the Customs Acts in their application to beer that is entered for home consumption after 31 January 1989 in a container other than a bulk container, the container in which the beer is packaged shall be treated as containing:

(a) if the volume of the contents of the container is indicated on a label printed on, or attached to, the container and the actual volume of the contents of the container does not exceed 101.5% of the volume so indicated—the volume so indicated;

(b) if the volume of the contents of the container is indicated on a label printed on, or attached to, the container and the actual volume of the contents of the container exceeds 101.5% of the volume so indicated—a volume equal to the sum of:

(i) the volume so indicated; and

(ii) the volume by which the actual volume of the contents of the container exceeds 101.5% of the volume so indicated; or

(c) if the volume of the contents of the container is not indicated on a label printed on, or attached to, the container—the actual volume of the contents of the container;

and duty on beer so entered shall be fixed accordingly.

(3) In determining, for the purposes of this section, the volume of the contents of containers entered for home consumption, the Customs is not required to take a measurement of the contents of each container so entered but may employ such methods of sampling as are approved in writing by the CEO for the purpose.

(4) In this section:

"bulk container", in relation to beer, means a container that has the capacity to have packaged in it more than 2 litres of beer;

"container", in relation to beer, includes a bottle, can or any other article capable of holding liquids.

Measurement for duty

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.

Value of goods sold

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.

Strength of spirits

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

Obscuration

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.

Derelict goods dutiable

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.

Duty on goods in report of cargo that are not produced or landed

149. (1) If any dutiable goods which are included in the report of any ship or aircraft are not 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.

(2) For the purposes of section 132, goods to which subsection (1) of this section applies that have not been entered for home consumption shall be taken to have been entered for home consumption on the day on which the demand for duty on the goods is made.

Samples

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.

Alterations to agreements where duty altered

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.

(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.

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

(3) Subsection (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 1A—Rules of origin of preference claim goods

Purpose of Division

153A. **(1)** The purpose of this Division is to set out rules for determining whether goods are the produce or manufacture:

(a) of a particular country other than Australia; or

(b) of a Developing Country but not of a particular Developing Country.

(2) Goods are not the produce or manufacture of a country other than Australia unless, under the rules as so set out, they are its produce or manufacture.

(3) Diagrams and explanatory notes illustrating certain operations of this Division in relation to New Zealand are set out in Schedule VII. Details are as follows:

(a) Diagram 1 is a decision diagram for working out whether goods are the produce or manufacture of New Zealand;

(b) Diagram 2 gives an example of goods that are last processed in New Zealand to show, in particular, how allowable expenditure on materials, allowable factory cost and total factory cost are worked out.

Definitions

153B. In this Division:

"allowable factory cost", in relation to preference claim goods and to the factory at which the last process of their manufacture was performed, means the sum of:

(a) the allowable expenditure of the factory on materials in respect of the goods worked out under section 153D; and

(b) the allowable expenditure of the factory on labour in respect of the goods worked out under section 153F; and

(c) the allowable expenditure of the factory on overheads in respect of the goods worked out under section 153G;

Developing Country has the same meaning as in the *Customs Tariff Act 1995*;

"factory", in relation to preference claim goods, means:

(a) if the goods are claimed to be the manufacture of a particular preference country—the place in that country where the last process in the manufacture of the goods was performed; and

(b) if the goods are claimed to be the manufacture of a preference country that is a Developing Country but not a particular Developing Country—the place in Papua New Guinea or in a Forum Island Country where the last process in the manufacture of the goods was performed;

"Forum Island Country" has the same meaning as in the *Customs Tariff Act 1995*;

"inner container" includes any container into which preference claim goods are packed, other than a shipping or airline container, pallet or other similar article;

"manufacturer", in relation to preference claim goods, means the person undertaking the last process in their manufacture;

"materials", in relation to preference claim goods, means:

(a) if the goods are unmanufactured raw products—those products; and

(b) if the goods are manufactured goods—all matter or substances used or consumed in the manufacture of the goods (other than that matter or those substances that are treated as overheads); and

(c) in either case—the inner containers in which the goods are packed;

"person" includes partnerships and unincorporated associations;

"preference claim goods" means goods that are claimed, when they are entered for home consumption, to be the produce or manufacture of a preference country;

"preference country" has the same meaning as in the *Customs Tariff Act 1995*;

"qualifying area", in relation to particular preference claim goods, means:

(a) if the goods are claimed to be the manufacture of New Zealand—New Zealand and Australia; or

(b) if the goods are claimed to be the manufacture of Canada—Canada and Australia; or

(c) if the goods are claimed to be the manufacture of Papua New Guinea—Papua New Guinea, the Forum Island Countries, New Zealand and Australia; or

(d) if the goods are claimed to be the manufacture of a Forum Island Country—the Forum Island Countries, Papua New Guinea, New Zealand and Australia; or

(e) if the goods are claimed to be the manufacture of a particular Developing Country—the Developing Country, Papua New Guinea, the Forum Island Countries, the other Developing Countries and Australia; or

(f) if the goods are claimed to be the manufacture of a Developing Country but not a particular Developing Country—Papua New Guinea, the Forum Island Countries, the Developing Countries and Australia; or

(g) if the goods are claimed to be the manufacture of a country that is not a preference country—that country and Australia;

"total factory cost", in relation to preference claim goods, means the sum of:

(a) the total expenditure of the factory on materials in respect of the goods, worked out under section 153C; and

(b) the allowable expenditure of the factory on labour in respect of the goods, worked out under section 153F; and

(c) the allowable expenditure of the factory on overheads in respect of the goods, worked out under section 153G.

Total expenditure of factory on materials

153C. The total expenditure of a factory on materials in respect of preference claim goods is the cost to the manufacturer of the materials in the form they are received at the factory, worked out under section 153E.

Allowable expenditure of factory on materials

General rule for determining allowable expenditure of a factory on materials

153D. (1) Subject to the exceptions set out in this section, the allowable expenditure of a factory on materials in respect of preference claim goods is the cost to the manufacturer of those materials in the form they are received at the factory, worked out under section 153E.

Goods wholly or partly manufactured from materials imported from outside the qualifying area

(2) If:

(a) preference claim goods (other than goods wholly manufactured from unmanufactured raw products) are manufactured, in whole or in part, from particular materials; and

(b) those particular materials, in the form they are received at the factory, are imported from a country outside the qualifying area;

there is no allowable expenditure of the factory on those particular materials.

Inland freight rule

(3) If:

(a) preference claim goods are manufactured, in whole or in part, from particular materials; and

(b) the preference country is Papua New Guinea or a Forum Island Country; and

(c) those particular materials:

(i) were imported into the preference country from a country outside the qualifying area; or

(ii) incorporate other materials (**"contributing materials"**) imported into the preference country from a country outside the qualifying area;

then, despite subsection (2), the allowable expenditure of the factory on those particular materials includes:

(d) the cartage of those particular materials; or

(e) the part of the cost of those particular materials that is attributable to the cartage of those contributing materials;

from the port or airport in the preference country where those particular materials or contributing materials are first landed to the factory or to the plant where they are processed or first processed.

Goods wholly or partly manufactured from materials imported from outside the qualifying area—intervening manufacture

(4) If:

(a) preference claim goods are manufactured, in whole or in part, from particular materials; and

(b) other materials (**"contributing materials"**) have been incorporated in those particular materials; and

(c) those contributing materials were imported into a country in the qualifying area from a country outside the qualifying area; and

(d) after their importation and to achieve that incorporation, those contributing materials have been subjected to a process of manufacture, or a series of processes of manufacture, in the qualifying area without any intervening exportation to a country outside that area;

the allowable expenditure of the factory on those particular materials in the form they are received at the factory does not include any part of the cost of those particular materials to the manufacturer, worked out under section 153E, that is attributable to the cost of those

contributing materials in the form in which the contributing materials were received by the person who subjected them to their first manufacturing process in the qualifying area after importation.

Intervening export of contributing materials

(5) If contributing materials within the meaning of subsection (4) are, after their importation into a country in the qualifying area and before their incorporation into the particular materials from which preference claim goods are manufactured, subsequently exported to a country outside that area, then, on their reimportation into a country in the qualifying area, subsection (2) or (4), as the case requires, applies as if that subsequent reimportation were the only importation of those materials.

Goods claimed to be the manufacture of New Zealand—special rule

(6) If:

(a) goods claimed to be the manufacture of New Zealand are manufactured, in whole or in part, from particular materials; and

(b) the allowable expenditure of the factory on those particular materials, after excluding any costs required to be excluded under subsection (4), would be at least 50% of the total expenditure of the factory on those particular materials, worked out in accordance with section 153C;

then, despite subsection (4), the allowable expenditure of the factory on those particular materials is taken to be that total expenditure.

Goods claimed to be the manufacture of Papua New Guinea or a Forum Island Country—special rule

(6A) If:

(a) goods claimed to be the manufacture of Papua New Guinea or a particular Forum Island Country are manufactured, in whole or in part, from particular materials; and

(b) if the qualifying area for that country consisted only of that country and Australia—under subsection (4), the allowable expenditure of the factory on those particular materials, after excluding any costs required to be excluded under subsection (4), would be at least 50% of the total expenditure of the factory on those particular materials worked out in accordance with section 153C;

then, despite subsection (4), the allowable expenditure of the factory on those particular materials is taken to be that total expenditure.

Waste or scrap

(7) If:

(a) materials are imported into a country; and

(b) the subjecting of those materials to a process of manufacture gives rise to waste or scrap; and

(c) that waste or scrap is fit only for the recovery of raw materials;

any raw materials that are so recovered in that country are to be treated, for the purposes of this section, as if they were unmanufactured raw products of that country.

Transhipment

(8) If, in the course of their exportation from one country to another country, materials are transhipped, that transhipment is to be disregarded for the purpose of determining, under this section, the country from which the materials were exported.

Calculation of the cost of materials received at a factory

Purpose of section

153E. (1) This section sets out, for the purposes of sections 153C and 153D, the rules for working out the cost of materials in the form they are received at a factory.

General rule

(2) Subject to this section, the cost of materials received at a factory is the amount paid or payable by the manufacturer in respect of the materials in the form they are so received.

Customs and excise duties and certain other taxes to be disregarded

(3) Any part of the cost of materials in the form they are received at a factory that represents:

(a) a customs or excise duty; or

(b) a tax in the nature of a sales tax, a goods and services tax, an anti-dumping duty or a countervailing duty;

imposed on the materials by a country in the qualifying area is to be disregarded.

CEO may require artificial elements of cost to be disregarded

(4) If the CEO is satisfied that preference claim goods consist partly of materials added or attached solely for the purpose of artificially raising the allowable factory cost of the goods, the CEO may, by written notice given to the importer of the preference claim goods, require the part of that cost that is, in the CEO's opinion, reasonably attributable to those materials, to be disregarded.

CEO may require cost over normal market value to be disregarded

(5) If the CEO is satisfied that the cost to the manufacturer of materials in the form they are received at a factory exceeds, by an amount determined by the CEO, the normal market value of the materials, the CEO may, by written notice given to the importer of preference claim goods in which those materials are incorporated, require the excess to be disregarded.

CEO may determine cost of certain materials received at a factory

(6) If the CEO is satisfied:

(a) that materials in the form they are received at a factory are so received:

(i) free of charge; or

(ii) at a cost that is less than the normal market value of the materials; and

(b) that the receipt of the materials free of charge or at a reduced cost has been arranged, directly or indirectly, by a person who will be the importer of preference claim goods in which those materials are incorporated;

the CEO may, by written notice given to the importer, require that an amount determined by the CEO to be the difference between the cost, if any, paid by the manufacturer and the normal market value be treated as the amount, or a part of the amount, paid by the manufacturer in respect of the materials.

Effect of determination

(7) If the CEO gives a notice to the importer of preference claim goods under subsection (4), (5) or (6) in respect of materials incorporated in those goods, the cost of the materials to the manufacturer must be determined having regard to the terms of that notice.

Allowable expenditure of factory on labour

Calculation of allowable expenditure of factory on labour

153F. (1) Allowable expenditure of a factory on labour in respect of preference claim goods means the sum of the part of each cost prescribed for the purposes of this subsection:

(a) that is incurred by the manufacturer of the goods; and

(b) that relates, directly or indirectly, and wholly or partly, to the manufacture of the goods; and

(c) that can reasonably be allocated to the manufacture of the goods.

Regulations may specify manner of working out cost

(2) Regulations prescribing a cost for the purposes of subsection (1) may also specify the manner of working out that cost.

Allowable expenditure of factory on overheads

Calculation of allowable expenditure of factory on overheads

153G. (1) Allowable expenditure of a factory on overheads in respect of preference claim goods means the sum of the part of each cost prescribed for the purposes of this subsection:

(a) that is incurred by the manufacturer of the goods; and

(b) that relates, directly or indirectly, and wholly or partly, to the manufacture of the goods; and

(c) that can reasonably be allocated to the manufacture of the goods.

Regulations may specify manner of working out cost

(2) Regulations prescribing a cost for the purposes of subsection (1) may also specify the manner of working out that cost.

Unmanufactured goods

153H. Goods claimed to be the produce of a country are the produce of that country if they are its unmanufactured raw products.

Manufactured goods originating in New Zealand

Rule for certain goods wholly manufactured in New Zealand

153J. (1) Goods claimed to be the manufacture of New Zealand are the manufacture of that country if they are wholly manufactured in New Zealand from one or more of the following:

(a) unmanufactured raw products;

(b) materials wholly manufactured in Australia or New Zealand or Australia and New Zealand;

(c) materials imported into New Zealand that the CEO has determined, by *Gazette* notice, to be manufactured raw materials of New Zealand.

Rule for other manufactured goods last processed in New Zealand

(2) Goods claimed to be the manufacture of New Zealand are the manufacture of that country if:

(a) the last process in their manufacture was performed in New Zealand; and

(b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

Specified percentage

(3) The specified percentage of the total factory cost of goods referred to in subsection (2) is:

(a) unless paragraph (b) applies—50%; or

(b) if the goods are of a kind for which the CEO has determined, by *Gazette* notice, that another percentage is appropriate—that percentage.

Modification of section 153J in special circumstances

When 50% in subsection 153J (3) can be read as 48%

153K. (1) If the CEO is satisfied:

(a) that the allowable factory cost of preference claim goods in a shipment of such goods that are claimed to be the manufacture of New Zealand is at least 48% but not 50% of the total factory cost of those goods; and

(b) that the allowable factory cost of those goods would be at least 50% of the total factory cost of those goods if an unforeseen circumstance had not occurred; and

(c) that the unforeseen circumstance is unlikely to continue;

the CEO may determine, in writing, that section 153J has effect:

(d) for the purpose of the shipment of goods that is affected by that unforeseen circumstance; and

(e) for the purposes of any subsequent shipment of similar goods that is so affected during a period specified in the determination;

as if the reference in subsection 153J (3) to 50% were a reference to 48%.

Effect of determination

(2) If the CEO makes a determination then, in relation to all preference claim goods imported into Australia that are covered by that determination, section 153J has effect in accordance with the determination.

CEO may revoke determination

(3) If:

(a) the CEO makes a determination; and

(b) the CEO becomes satisfied that the unforeseen circumstance giving rise to the determination no longer continues;

the CEO may, by written notice, revoke the determination despite the fact that the period referred to in the determination has not ended.

Definition of "similar goods"

(4) In this section:

"similar goods", in relation to goods in a particular shipment, means goods:

(a) that are contained in another shipment that is imported by the same importer; and

(b) that undergo the same process or processes of manufacture as the goods in the first-mentioned shipment.

Manufactured goods originating in Papua New Guinea or a Forum Island Country

Rule for certain goods wholly manufactured in Papua New Guinea

153L. (1) Goods claimed to be the manufacture of Papua New Guinea are the manufacture of that country if they are wholly manufactured in Papua New Guinea from one or more of the following:

(a) unmanufactured raw products;

(b) materials wholly manufactured in Australia or Papua New Guinea or Australia and Papua New Guinea;

(c) materials imported into Papua New Guinea that the CEO has determined, by *Gazette* notice, to be manufactured raw materials of Papua New Guinea.

Rule for manufactured goods last processed in PNG or a Forum Island Country

(2) Goods claimed to be the manufacture of Papua New Guinea or of a Forum Island Country are the manufacture of that country if:

(a) the last process in their manufacture was performed in that country; and

(b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

Specified percentage

(4) The specified percentage of the total factory cost of goods referred to in subsection (2) is:

(a) unless paragraph (b) applies—50%; or

(b) if the goods are of a kind for which the CEO has determined, by *Gazette* notice, that a lesser percentage is appropriate—that percentage.

Modification of section 153L in special circumstances

When 50% in subsection 153L (4) can be read as 48%

153LA. (1) If the CEO is satisfied:

(a) that the allowable factory cost of preference claim goods in a shipment of such goods that are claimed to be the manufacture of Papua New Guinea or a Forum Island Country is at least 48% but not 50% of the total factory cost of those goods; and

(b) that the allowable factory cost of those goods would be at least 50% of the total factory cost of those goods if an unforeseen circumstance had not occurred; and

(c) that the unforeseen circumstance is unlikely to continue;

the CEO may determine, in writing, that section 153L has effect:

(d) for the purpose of the shipment of goods that is affected by that unforeseen circumstance; and

(e) for the purposes of any subsequent shipment of similar goods that is so affected during a period specified in the determination;

as if the reference in subsection 153L (4) to 50% were a reference to 48%.

Effect of determination

(2) If the CEO makes a determination, then, in relation to all preference claim goods imported into Australia that are covered by the determination, section 153L has effect in accordance with the determination.

CEO may revoke determination

(3) If:

(a) the CEO makes a determination; and

(b) the CEO becomes satisfied that the unforeseen circumstance giving rise to the determination no longer continues;

the CEO may, by written notice, revoke the determination despite the fact that the period referred to in the determination has not ended.

Definition of "similar goods"

(4) In this section:

"similar goods", in relation to goods in a particular shipment, means goods:

(a) that are contained in another shipment that is imported by the same importer; and

(b) that undergo the same process or processes of manufacture as the goods in the first-mentioned shipment.

Manufactured goods originating in a particular Developing Country

153M. Goods claimed to be the manufacture of a particular Developing Country are the manufacture of that country if:

(a) the last process in their manufacture was performed in that country; and

(b) having regard to their qualifying area, their allowable factory cost is at least 50% of their total factory cost.

Manufactured goods originating in a Developing Country but not in any particular Developing Country

153N. Goods claimed to be the manufacture of a Developing Country, but not of any particular Developing Country, are the manufacture of a Developing Country, but not a particular Developing Country, if:

(a) the last process in their manufacture was performed in Papua New Guinea or a Forum Island Country; and

(b) they are not the manufacture of Papua New Guinea or a Forum Island Country under section 153L; and

(c) having regard to their qualifying area, their allowable factory cost is at least 50% of their total factory cost.

Manufactured goods originating in Canada

General rule

153P. (1) Despite section 153H and subsections (2) and (3), goods claimed to be the produce or manufacture of Canada are not the produce or manufacture of that country unless:

(a) they have been shipped to Australia from Canada; and

(b) either:

(i) they have not been transhipped; or

(ii) the CEO is satisfied that, when they were shipped from Canada, their intended destination was Australia.

Rule for certain manufactured goods wholly manufactured in Canada

(2) Goods claimed to be the manufacture of Canada are the manufacture of that country if they are wholly manufactured in Canada from one or more of the following:

(a) unmanufactured raw products;

(b) materials wholly manufactured in Australia or Canada or Australia and Canada;

(c) materials imported into Canada that the CEO has determined, by *Gazette* notice, to be manufactured raw materials of Canada.

Rule for other manufactured goods last processed in Canada

(3) Goods claimed to be the manufacture of Canada are the manufacture of that country if:

(a) the last process in their manufacture was performed in Canada; and

(b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

Specified percentage

(4) The specified percentage of the total factory cost of goods referred to in subsection (3) is:

(a) if the goods are of a kind commercially manufactured in Australia—75%; or

(b) if the goods are of a kind not commercially manufactured in Australia—25%.

Manufactured goods originating in a country that is not a preference country

Rule for certain goods wholly manufactured in a country that is not a preference country

153Q. (1) Goods claimed to be the manufacture of a country that is not a preference country are the manufacture of that country if they are wholly manufactured in that country from one or more of the following:

(a) unmanufactured raw products;

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

(c) materials imported into the country that the CEO has determined, by *Gazette* notice, to be manufactured raw materials of the country.

Rule for other manufactured goods last processed in a country that is not a preference country

(2) Goods claimed to be the manufacture of a country that is not a preference country are the manufacture of that country if:

(a) the last process in their manufacture was performed in that country; and

(b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

Specified percentage

(3) Subject to subsection (4), the specified percentage of the total factory cost of goods referred to in subsection (2) is:

(a) if the goods are of a kind commercially manufactured in Australia—75%; or

(b) if the goods are of a kind not commercially manufactured in Australia—25%.

Special rule for Christmas Island, Cocos (Keeling) Islands and Norfolk Island

(4) If the country that is not a preference country is Christmas Island, Cocos (Keeling) Islands or Norfolk Island, the specified percentage of the total factory cost of goods referred to in subsection (2) is:

(a) if the goods are of a kind commercially manufactured in Australia—50%; or

(b) if the goods are of a kind not commercially manufactured in Australia—25%.

Are goods commercially manufactured in Australia?

CEO may determine that goods are, or are not, commercially manufactured in Australia

153R. (1) For the purposes of sections 153P and 153Q, the CEO may, by *Gazette* notice, determine that goods of a specified kind are, or are not, commercially manufactured in Australia.

Effect of determination

(2) If such a determination is made, this Division has effect accordingly.

Rule against double counting

153S. In determining the allowable factory cost or the total factory cost of preference claim goods, a cost incurred, whether directly or indirectly, by the manufacturer of the goods must not be taken into account more than once.

May be different rules of origin for anti-dumping purposes so far as New Zealand is concerned

153T. (1) Regulations and determinations made under this Division, to the extent that they determine whether or not goods are the produce or manufacture of New Zealand, may make different provision for the purposes:

(a) of Part XVB; and

(b) of this Act (other than Part XVB).

(2) Subsection (1) does not limit by implication the application of subsection 33 (3A) of the *Acts Interpretation Act 1901* in relation to this section.

Division 2—Valuation of Imported Goods

Interpretation

154. (1) In this Division, unless the contrary intention appears:

"about the same time" has the meaning given by subsection (2);

"acquire", in relation to goods, includes purchase, receive in exchange for other goods, take on lease, take on hire, take on hire-purchase and take under licence;

"Australian inland freight", in relation to imported goods, means:

(a) if any amount (other than an amount of an Australian inland insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of:

(i) the transportation of the goods on or after their importation into Australia; or

(ii) the obtaining of any commercial or other documentation required in respect of the transportation referred to in subparagraph (i) or in respect of the importation of the goods;

and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount (other than an amount of Australian inland insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the provision of a service referred to in subparagraph (a) (i) or (ii) and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount (other than an amount of Australian inland insurance) was paid or is payable by a trader in respect of the provision of a service referred to in subparagraph (a) (i) or (ii) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary costs payable in respect of the provision of the same service to a trader in respect of the same class of goods as the imported goods, under the same conditions, by a person who is not related to a trader of goods of that class, on or after their importation into Australia;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"Australian inland insurance", in relation to imported goods, means:

(a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods on or after importation into Australia and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a) and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount was paid or is payable by a trader in respect of insurance of a kind referred to in paragraph (a) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of the same kind of insurance to a trader in respect of the same class of goods as the imported goods, under the same conditions, where the insurer is not related to a trader of goods of that class;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"buying commission" has the meaning given by section 155;

"comparable goods", in relation to imported goods, means:

(a) the imported goods;

(b) identical goods; or

(c) similar goods;

"computed value", in relation to imported goods, has the meaning given by section 161F;

"computed valued goods" means exporter's goods:

(a) whose owner has, before the payment of duty in respect of the goods (whether before or after any determination of a value of the goods) requested a Collector to take their customs value to be their computed value in preference to their deductive value; and

(b) whose computed value can be determined by the Collector;

"customs value", in relation to imported goods, has the meaning given by section 159;

"deductible administrative costs", in relation to goods in a sale, means any costs that are payable on or after the importation of the goods into Australia in relation to the activities of, or services performed by, any local, State or Commonwealth public authorities or officers, any licensed Customs agent, or any other person in Australia, in connection with the importation and subsequent delivery of the goods;

"deductible financing costs", in relation to goods in a sale, means any interest payable under a written contract, agreement or arrangement under which the purchaser is permitted to delay the payment of the price in return for the payment of that interest (whether or not also in return for an increase in the price or for the payment of an additional amount), being a contract, agreement or arrangement entered into between the purchaser and the vendor or another person in relation to the purchase of the goods, where:

(a) the interest is distinguished to the satisfaction of a Collector from the price actually paid or payable for the goods;

(b) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that identical or similar goods are actually sold at the last-mentioned price—the purchaser so demonstrates; and

(c) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that the rate of the interest does not exceed the rate of interest in similar contracts, agreements or arrangements entered into in the country where, and at the time when, finance under the first-mentioned contract, agreement or arrangement was provided—the purchaser so demonstrates;

"deductive (contemporary sales) value", in relation to imported goods, has the meaning given by section 161C;

"deductive (derived goods sales) value", in relation to imported goods, has the meaning given by section 161E;

"deductive (later sales) value", in relation to imported goods, has the meaning given by section 161D;

"deductive value", in relation to imported goods, means their:

(a) deductive (contemporary sales) value;

(b) deductive (later sales) value; or

(c) deductive (derived goods sales) value;

"exempted container" means a container that:

(a) is not a pallet; and

(b) is or has been permitted to be temporarily imported into Australia free of Customs duty under section 162A;

"exempted pallet" means a pallet that is or has been permitted to be temporarily imported into Australia free of Customs duty under either section 162A or 162B;

"exporter's goods" means imported goods exported to Australia by their producer;

"fall-back value", in relation to imported goods, has the meaning given by section 161G;

"foreign inland freight", in relation to imported goods, means:

(a) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of:

(i) the transportation of the goods within a foreign country before they left their place of export; or

(ii) the obtaining of any commercial or other documentation (other than documentation required in respect of overseas freight or overseas insurance) required in respect of the transportation referred to in subparagraph (i) or in respect of the transportation of the goods from the foreign country concerned;

and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the provision of service referred to in subparagraph (a) (i) or (ii) and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader in respect of the provision of a service referred to in subparagraph (a) (i) or (ii) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary costs payable in respect of the provision of the same service to a trader, in respect of the same class of goods as the imported goods, under the same conditions, by a person who is not related to a trader of goods of that class, before leaving the same place of export;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"foreign inland insurance", in relation to imported goods, means:

(a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods within a foreign country before they left their place of export and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a) and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount was paid or is payable by a trader in respect of insurance of a kind referred to in paragraph (a) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of the same kind of insurance to a trader in respect of the same class of goods as the imported goods, under the same conditions, where the insurer is not related to a trader of goods of that class;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"identical goods", in relation to imported goods, has the meaning given by section 156;

"identical goods value", in relation to imported goods, has the meaning given by section 161A;

"import sales transaction", in relation to imported goods, means:

(a) where there was one, and only one, contract of sale for the importation of the goods into Australia entered into before they became subject to Customs control and it was also a contract for their exportation from a foreign country—that contract;

(b) where there was one, and only one, contract of sale for the importation of the goods into Australia entered into before they became subject to Customs control and it was not also a contract for their exportation from a foreign country—that contract; or

(c) where there were 2 or more contracts of sale for the importation of the goods into Australia entered into before they became subject to Customs control—whichever of the contracts was made last;

and includes:

(d) any contract, agreement or arrangement, whether formal or informal, to which the vendor, the purchaser or an agent of, or a person related to, the vendor or purchaser is a party that provides for an increase in the value of the goods the subject of the contract of sale referred to in paragraph (a), (b) or (c) prior to their importation; and

(e) any other contract, agreement or arrangement relating to the contract of sale referred to in paragraph (a), (b) or (c) that a Collector determines is so closely connected with that contract and to the goods the subject of that contract that together they form a single transaction;

"overseas freight", in relation to imported goods, means:

(a) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of the transportation of the goods from their place of export to Australia, the goods are not self transported goods and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the transportation referred to in paragraph (a), the goods concerned are not self transported goods and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader in respect of the transportation referred to in paragraph (a) but the goods concerned are self transported goods or a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount, as a Collector determines, having regard to the ordinary costs of the transportation of goods of the same class as the imported goods:

(i) if the imported goods are self transported goods—under the most commercially viable conditions; or

(ii) if the imported goods are not self transported goods—under the same conditions as the imported goods;

by a person who is not related to a trader of goods of that class, between the same foreign country and Australia;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"overseas insurance", in relation to imported goods, means:

(a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods from their place of export to Australia, the goods are not self transported goods and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a), the goods concerned are not self transported goods, and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount was paid or is payable in respect of insurance of a kind referred to in paragraph (a) but the goods concerned are self transported goods or a Collector is not satisfied as required by paragraph (a) or (b) whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of insurance in relation to the transportation of goods of the same class as the imported goods:

(i) if the imported goods are self transported goods—under the most commercially viable conditions; or

(ii) if the imported goods are not self transported goods—under the same conditions as the imported goods;

where the insurer is not related to a trader of the transported goods;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"place of export", in relation to imported goods, means:

(a) where, while in the country from which they were exported the goods were posted to Australia—the place where they were so posted;

(b) where, while in the country from which they were exported, the goods, not being goods referred to in paragraph (a), were packed in a container—the place where they were so packed;

(c) where the goods, being self transported goods, were exported from a country by sea or air—the place, or last place, in that country from which the goods departed for Australia;

(d) where the goods, not being goods referred to in paragraph (a), (b) or (c), were exported from a country by sea or air—the place, or first place, in that country where the goods were placed on board a ship or aircraft for export from that country;

(e) where the goods, not being goods referred to in paragraph (a), (b), (c) or (d), were exported from a country by land, or by river, canal or other inland waterway—the place at which the goods finally crossed the border from that country into another country in the course of their transportation to Australia; or

(f) in any other case—a place determined by a Collector;

"price", in relation to goods the subject of a contract of sale, means an amount determined by a Collector, after disregarding value unrelated matters in relation to those goods, to be the sum of:

(a) all payments that have been made, or are to be made, directly or indirectly, in relation to such goods, by or on behalf of the purchaser:

(i) to the vendor;

(ii) to any person related to the vendor unless a Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or

(iii) to any other person for the direct or indirect benefit of the vendor;

in accordance with the contract of sale; and

(b) all payments that have been made, or are to be made, directly or indirectly, in relation to such goods, by or on behalf of the purchaser:

(i) to the vendor;

(ii) to any person related to the vendor unless a Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or

(iii) to any other person for the direct or indirect benefit of the vendor;

under any other contract, agreement or arrangement, whether formal or informal, being a contract, agreement or arrangement for the doing of anything to increase the value of the goods or that a Collector is satisfied is so closely connected

with the contract of sale referred to in paragraph (a) and to the goods the subject of that contract that together they form a single transaction;

whether the payment is made in money or by letter of credit, negotiable instrument or otherwise, and includes:

(c) the value, as determined by a Collector, of any goods or services supplied, or to be supplied, by, or on behalf of, the purchaser as part of the consideration passing from the purchaser under the contract of sale referred to in paragraph (a); and

(d) the value, as determined by a Collector, of any goods or services supplied, or to be supplied, directly or indirectly, by, or on behalf of, the purchaser:

(i) to the vendor;

(ii) to any person related to the vendor unless the Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or

(iii) to any other person for the direct or indirect benefit of the vendor;

under a contract, agreement or arrangement of the kind referred to in paragraph (b);

but does not include the amount of any duty of Customs (including any dumping or countervailing duty imposed under the *Customs Tariff (Anti-Dumping) Act 1975*), any sales tax, or any other duty or tax, that is payable by law because of the importation into, or subsequent use, sale or disposition in, Australia of the goods;

"price related costs", in relation to imported goods, means:

(a) production assist costs in respect of the goods;

(b) packing costs for materials and labour paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods (including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the goods for their exportation from a foreign country or otherwise placing them in the condition in which they are imported into Australia, but not including the cost of any exempted pallet or exempted container concerned in their exportation);

(c) foreign inland freight and foreign inland insurance in relation to the goods paid or payable, directly or indirectly, by or on behalf of the purchaser;

(d) commission, other than a buying commission, or brokerage, paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods; or

(e) all royalties or licence fees paid or payable, directly or indirectly, by or on behalf of the purchaser to the vendor or to another person under the import sales transaction, not being royalties or licence fees:

(i) that do not relate to the imported goods in the condition, or substantially in the condition, in which they are imported into Australia;

(ii) whose only relationship to the imported goods in the condition in which they are imported into Australia is insubstantial or incidental;

(iii) that are merely for the right to reproduce the imported goods within Australia; or

(iv) that are payable for the assembly, erection, construction or maintenance of imported goods after their importation into Australia or for any technical assistance in respect of the goods after their importation; and

(f) the whole or any part of the proceeds of any subsequent use, resale or disposal of the goods, by or on behalf of the purchaser, that have accrue, or will accrue, to the vendor;

"produce" includes grow, manufacture, mine, process and treat;

"production assist costs", in relation to imported goods (including imported goods that are comparable goods or derived goods in relation to other imported goods), means the sum of:

(a) the purchaser's material costs;

(b) the purchaser's tooling costs;

(c) the purchaser's work costs; and

(d) the purchaser's subsidiary costs;

in relation to those first-mentioned imported goods;

"production materials", in relation to the imported goods, means:

(a) materials, components or other goods that form part of the imported goods; and

(b) materials consumed in the production of the imported goods;

"production tooling", in relation to imported goods, means tools, dies, moulds or other machinery or equipment used in the production of the imported goods;

"production work" means art work, design work, development work and engineering work and includes models, plans and sketches;

"purchaser", in relation to imported goods, means the purchaser under the import sales transaction for the goods;

"purchaser's material costs", in relation to imported goods, means the sum of the following amounts relating to production materials supplied, directly or indirectly, by the purchaser free of charge or at a reduced cost:

(a) an amount equal to:

(i) where the materials were acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition;

(ii) where the materials were acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the materials—the cost of acquisition of the materials by the person; or

(iii) where the materials were produced by the purchaser or by a person who was related to the purchaser at the time of production of the goods—the cost of production;

(b) the cost of transporting the materials after their acquisition or production by the purchaser to the place of production of the imported goods;

(c) the cost of repairs and modifications of the materials after their acquisition or production by the purchaser;

"purchaser's subsidiary costs", in relation to imported goods, means such part of the sum of the following amounts relating to subsidiary goods, or subsidiary services, supplied, directly or indirectly, by the purchaser free of charge or at a reduced price as a Collector considers should be apportioned to the production of the imported goods:

(a) an amount equal to:

(i) where the subsidiary goods relate to work goods and were available generally to the public in Australia or elsewhere at the time of acquisition by the purchaser (in this definition called **"available goods"**)—the cost to the public of acquiring the available goods;

(ii) where the subsidiary goods (other than available goods) were acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition;

(iii) where the subsidiary goods (other than available goods) were acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the goods—the cost of acquisition by the person; or

(iv) where the subsidiary goods (other than available goods) were produced by the purchaser or by a person who was related to the purchaser at the time of the production of the goods—the cost of that production;

(b) the cost of transporting the subsidiary goods (other than goods that relate to work goods) after their acquisition or production by the purchaser to the place of production of the production materials or production tooling, as the case requires;

(c) the cost of repairs and modifications of subsidiary goods, (other than goods that relate to work goods), after their acquisition or production by the purchaser;

(d) the cost of repairs and modifications outside Australia of subsidiary goods that relate to work goods after the acquisition or production of the subsidiary goods by the purchaser;

(e) an amount equal to:

(i) where the subsidiary services were supplied by a person who was not related to the purchaser at the time of the supply—the cost of that supply; or

(ii) in any other case—such amount as the Collector determines to be the value of the subsidiary services;

(f) the cost of the supply of any further services in relation to the subsidiary services (other than services that relate to work services);

(g) the cost of the supply outside Australia of any further services in relation to the subsidiary services that relate to work services;

"purchaser's tooling costs", in relation to imported goods, means such part of the sum of the following amounts relating to production tooling supplied, directly or indirectly, by the purchaser free of charge or at a reduced price as a Collector considers should be apportioned to the production of the imported goods:

(a) an amount equal to:

(i) where the tooling was acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition;

(ii) where the tooling was acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the tooling—the cost of acquisition of the tooling by the person; or

(iii) where the tooling was produced by the purchaser or by a person who was related to the purchaser at the time of production of the tools—the cost of production;

(b) the cost of transporting the tooling after its acquisition or production by the purchaser to the place of production of the imported goods;

(c) the cost of repairs and modifications of the tooling after its acquisition or production by the purchaser;

"purchaser's work costs", in relation to imported goods, means such part of the sum of the following amounts relating to work goods, or work services, supplied, directly or indirectly, by the purchaser free of charge or at a reduced price, as a Collector considers should be apportioned to the production of the imported goods:

(a) an amount equal to:

(i) where the work goods were available generally to the public in Australia or elsewhere at the time of acquisition by the purchaser (in this definition called **"available goods"**)—the cost to the public of acquiring the goods;

(ii) where the work goods (other than available goods) were acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition;

(iii) where the work goods (other than available goods) were acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the work goods—the cost of acquisition by the person; or

(iv) where the work goods (other than available goods) were produced by the purchaser or by a person who was related to the purchaser at the time of the production of the work goods—the cost of that production;

(b) the cost of transporting the work goods, after their acquisition or production by the purchaser to the place of production of the imported goods;

(c) the cost of repairs and modifications outside Australia of the work goods after their acquisition by the purchaser;

(d) an amount equal to:

(i) where the work services were supplied by a person who was not related to the purchaser at the time of the supply—the cost of that supply; or

(ii) in any other case—such amount as the Collector determines to be the value of the work services;

(e) the cost of the supply outside Australia of any further services in relation to the work services;

"related", in relation to persons, has the meaning given by subsection (3);

"request goods" means goods whose owner has requested a Collector to determine their deductive (derived goods sales) value;

"royalty", in relation to imported goods, means royalty within the meaning given by section 157;

"self transported goods" means:

(a) a ship imported otherwise than in another ship or an aircraft; or

(b) an aircraft imported otherwise than in a ship or another aircraft;

"similar goods", in relation to imported goods, has the meaning given by section 156;

"similar goods value", in relation to imported goods, has the meaning given by section 161B;

"subsidiary goods", in relation to imported goods, means goods supplied, directly or indirectly, by the purchaser in relation to the production of production materials, production tooling, work goods, or work services, supplied, directly or indirectly by the purchaser (whether or not free of charge or at a reduced cost) in relation to the production of the imported goods;

"subsidiary services", in relation to imported goods, means services supplied, directly or indirectly, by the purchaser in relation to the production of production materials, production tooling, work goods, or work services, supplied, directly or indirectly by the purchaser (whether or not free of charge or at a reduced cost) in relation to the production of the imported goods;

"trade mark" means a mark of a kind capable of registration under the *Trade Marks Act 1955*, whether or not it is registered under that Act or any other law, but does not include a mark that relates to a service;

"trader", in relation to goods, means a vendor, exporter, purchaser or importer of the goods;

"transaction value", in relation to imported goods, has the meaning given by section 161;

"transportation" includes transportation by post and storage or handling incidental to transportation;

"value unrelated amount", in relation to goods in a sale, means:

(a) where the sale is on commission—the amount of commission usually earned in connection with the sale of other goods of the same class and in the same quantity as the goods in the sale, being a sale of other goods in Australia at the same trade level as the first-mentioned goods;

(b) where the sale is not on commission—the amount usually added for profit and general expenses (including all costs, direct or indirect, of marketing), taken as a whole, in

connection with the sale of other goods of the same class or kind and in the same quantity as the goods in the sale, being a sale of other goods in Australia at the same trade level as the first-mentioned goods;

(c) Australian inland freight and Australian inland insurance in respect of the goods in the sale or of the goods from which the goods in the sale were derived;

(d) the amount of any duties of Customs and other taxes payable because of the importation into, or the sale in, Australia of the goods in the sale or of goods from which the goods in the sale were derived; and

(e) overseas freight and overseas insurance in relation to the goods in the sale or of the goods from which the goods in the sale were derived;

"value unrelated matter", in relation to goods the subject of a contract for sale, means:

(a) any rebate of, or other decrease in, the price other than such a rebate or decrease the benefit of which has been received when the price is being determined; or

(b) any costs, charges or expenses in relation to activities undertaken by the purchaser on the purchaser's own account in relation to the goods (including any activities of the purchaser relating to advertising or promoting the sale of, or to warranties or guarantees in relation to, the goods);

"vendor", in relation to imported goods, means the vendor under the import sales transaction for the goods;

"work goods", in relation to imported goods, means goods relating to production work that was:

(a) required for the production of the imported goods; and

(b) undertaken outside Australia;

"work services", in relation to imported goods, means services relating to production work that was:

(a) required for the production of the imported goods; and

(b) undertaken outside Australia.

(2) For the purposes of this Division, an event occurs about the same time as another event if the first event occurs:

(a) on the same day as the other event; or

(b) within the 45 days immediately before, or the 45 days immediately after, the day on which the other event occurs.

(3) For the purposes of this Division, 2 persons shall be deemed to be related to each other if, and only if:

(a) both being natural persons:

(i) they are connected by a blood relationship or by marriage or by adoption; or

(ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;

(b) both being bodies corporate:

(i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate);

(ii) both of them together control, directly or indirectly, a third body corporate;

(iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them;

(c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate);

(d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or

(e) they are members of the same partnership.

(4) A person, whether or not a body corporate, shall be taken to control another body corporate for the purposes of subsection (3) if that person has the capacity to impose any restraint or restrictions upon, or to exercise any direction over, that other body corporate.

(5) Without, by implication, affecting the meaning of any reference to an owner of goods in any other provision of this Act, a reference in this Division to the owner of goods, being a ship or aircraft, shall not be taken to include a person acting as agent for the owner or receiving freight or other charges payable in respect of the ship or aircraft.

Interpretation—Buying commission

155. (1) Subject to subsection (2), a reference in this Division to a buying commission in relation to imported goods is a reference to an amount paid or payable by or on behalf of the purchaser of the goods directly or indirectly to a person who, as an agent of the purchaser, represented the purchaser in the purchase of the goods in the import sales transaction.

(2) An amount paid by a purchaser of imported goods to another person in the circumstances referred to in subsection (1) shall be taken not to be a buying commission unless a Collector is satisfied that that other person did not and does not:

(a) produce, in whole or in part, or control the production, in whole or in part of:

(i) the imported goods, or any other goods whose value would be taken into account in determining, or attempting to determine, the transaction value of the imported goods; or

(ii) any other goods of the same class as goods referred to in subparagraph (i);

(b) supply, or control the supply of, any services:

(i) whose value would be taken into account in determining, or attempting to determine, the price of the imported goods; or

(ii) any other services of the same class as the services referred to in subparagraph (i);

(c) transport the imported goods, or any other goods referred to in subparagraph (a) (i), within any foreign country, between a foreign country and Australia, or within Australia, for any purpose associated with the manufacture or importation of those imported goods;

(d) purchase, exchange, sell, or otherwise trade any of the goods referred to in subparagraph (a) (i) or supply any of the services referred to in subparagraph (b) (i) other than in the capacity of an agent of the purchaser;

(e) in relation to any of the goods referred to in subparagraph (a) (i) or any of the services referred to in subparagraph (b) (i):

(i) act as an agent for, or in any other way represent, the producer, supplier, or vendor of the goods or services; or

(ii) otherwise be associated with any such person except as the agent of the purchaser; or

(f) claim or receive, directly or indirectly, the benefit of any commission, fee or other payment, in the form of money, letter of credit, negotiable instruments, or any goods or services, from any person as a consequence of the import sales transaction, other than commission received from the purchaser for the services rendered by that person in that transaction.

Interpretation—Identical goods and similar goods

156. (1) Subject to subsection (2), a reference in this Division to identical goods, in relation to imported goods is a reference to goods that a Collector is prepared, or is required by their owner, to treat as identical goods in relation to the imported goods, being goods that the Collector is satisfied:

(a) are the same in all material respects, including physical characteristics, quality and reputation, as the imported goods;

(b) were produced in the same country as the imported goods; and

(c) were produced by or on behalf of the producer of the imported goods;

but not being goods in relation to which:

(d) art work, design work, development work, engineering work undertaken, or substantially undertaken, in Australia; or

(e) models, plans or sketches prepared, or substantially prepared, in Australia;

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

(2) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under subsection (1) as identical goods in relation to the goods to be valued, the Collector shall disregard the requirement in paragraph (1) (c) for the purpose of treating goods as identical goods in relation to the imported goods.

(3) Subject to subsection (4), a reference in this Division to similar goods, in relation to imported goods, is a reference to goods that a Collector is prepared, or is required by their owner, to treat as similar goods in relation to the imported goods, being goods that the Collector is satisfied:

(a) closely resemble the imported goods in respect of component materials and parts and in respect of physical characteristics;

(b) are functionally and commercially interchangeable with the imported goods having regard to the quality and reputation (including any relevant trade marks) of each lot of goods;

(c) were produced in the same country as the imported goods; and

(d) were produced by or on behalf of the producer of the imported goods;

but not being goods in relation to which:

(e) art work, design work, development work or engineering work undertaken, or substantially undertaken, in Australia; or

(f) models, plans or sketches prepared, or substantially prepared, in Australia;

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

(4) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under subsection (3) as similar goods in relation to the goods to be valued, the Collector shall disregard the requirement in paragraph (3) (d) for the purpose of treating goods as similar goods in relation to the imported goods.

Interpretation—Royalties

157. (1) A reference in this Division to a royalty includes a reference to an amount paid or credited (however described or computed and whether the payment or credit is periodical or not) to the extent to which the amount is paid or credited as consideration for:

(a) the making, use, exercise or vending of an invention or the right to make, use, exercise or vend an invention;

(b) the use of, or the right to use:

(i) a design or trade mark;

(ii) confidential information; or

(iii) machinery, implements, apparatus or other equipment;

(c) the supply of scientific, technical, industrial, commercial or other knowledge or information;

(d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any matter falling within any of the foregoing paragraphs; or

(e) a total or partial forbearance in respect of any matter falling within any of the foregoing paragraphs (including paragraph (d)).

(2) Where:

(a) a person pays an amount of royalty in respect of goods at a time when the goods are not imported goods;

(b) the goods are imported goods before or after the payment; and

(c) the payment is made in connection with a scheme entered into or carried out for the purpose of the payment not being royalty for the purposes of this Division;

the payment shall be deemed, for the purposes of this Division, to have been made at a time when the goods were imported goods.

(3) In this section:

"design" means a design of a kind capable of being registered under the *Designs Act 1906*, whether or not it is registered under that Act or any other law;

"payment", in relation to an amount, includes the incurring of a liability to pay, and the crediting of, the amount;

"scheme" means:

(a) an agreement, arrangement, understanding, promise or undertaking, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

(b) a plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;

"use", includes hire-out, lease-out, rent-out, sell, market, distribute or otherwise trade in or dispose of.

(4) For the purposes of this section, a scheme shall be taken to be entered into or carried out for a particular purpose if the person who has, or one or more of the persons who have, entered into or carried out the scheme or a part of the scheme did so for that purpose or for purposes including that purpose.

Interpretation—Transportation costs

158. Where the purchaser of imported goods:

(a) has supplied any production material, production tooling or work goods in relation to those imported goods to a person in a foreign country for the purposes related to the production of those imported goods; or

(b) has supplied any subsidiary goods to a person in a foreign country for purposes related to the production of production materials, production tooling, work goods or work services in relation to those imported goods;

references in this Division to the cost of transporting that production material or production tooling or those work goods or subsidiary goods, after its or their acquisition or production by the purchaser, to the place of production in that foreign country shall be taken to include:

(c) the packing costs for materials and labour paid or payable by or on behalf of the purchaser in relation to that production material, or production tooling or those work goods or subsidiary goods including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the material tooling or goods for transportation to the place of production of the imported goods;

(d) any amount paid or payable by or on behalf of the purchaser in relation to that production material or production tooling or those work goods or subsidiary goods that would:

(i) if that foreign country were Australia;

(ii) if any other country from which that material or tooling or those goods were exported were a foreign country; and

(iii) if that material or tooling or those goods were imported goods;

be an amount of foreign inland freight or foreign inland insurance, overseas freight or overseas insurance, or Australian inland freight or Australian inland insurance; and

(e) all duties of Customs, sales tax, or other duties or taxes paid or payable in consequence of the importation of that production tooling or those work goods or subsidiary goods or in consequence of any other use, sale or disposition in that foreign country.

Value of imported goods

159. (1) Unless the contrary intention appears in this Act or in another Act, the value of imported goods for the purposes of an Act imposing duty is their customs value and the Collector shall determine that customs value in accordance with this section.

(2) Where a Collector can determine the transaction value of imported goods, their customs value is their transaction value.

(3) Where a Collector cannot determine the transaction value of imported goods but can determine their identical goods value, their customs value is their identical goods value.

(4) Where a Collector:

(a) cannot determine the transaction value of imported goods; and

(b) cannot determine their identical goods value;

but can determine their similar goods value, their customs value is their similar goods value.

(5) Where a Collector:

(a) cannot determine the transaction value of imported goods, not being computed valued goods;

(b) cannot determine their identical goods value; and

(c) cannot determine their similar goods value;

but can determine their deductive (contemporary sales) value, their customs value is their deductive (contemporary sales) value.

(6) Where a Collector:

(a) cannot determine the transaction value of imported goods, not being computed valued goods;

(b) cannot determine their identical goods value;

(c) cannot determine their similar goods value; and

(d) cannot determine their deductive (contemporary sales) value;

but can determine their deductive (later sales) value, their customs value is their deductive (later sales) value.

(7) Where a Collector:

(a) cannot determine the transaction value of imported goods, not being computed valued goods but being request goods;

(b) cannot determine their identical goods value;
(c) cannot determine their similar goods value;
(d) cannot determine their deductive (contemporary sales) value; and
(e) cannot determine their deductive (later sales) value;

but can determine their deductive (derived goods sales) value, their customs value is their deductive (derived goods sales) value.

(8) Where a Collector:
(a) cannot determine the transaction value of exporter's goods, not being computed valued goods;
(b) cannot determine their identical goods value;
(c) cannot determine their similar goods value;
(d) where they are request goods, cannot determine any of their deductive values; and
(e) where they are not request goods:
(i) cannot determine their deductive (contemporary sales) value; and
(ii) cannot determine their deductive (later sales) value;

but can determine their computed value, their customs value is their computed value.

(9) Where a Collector:
(a) cannot determine the transaction value of imported goods, being computed valued goods;
(b) cannot determine their identical goods value; and
(c) cannot determine their similar goods value;

their customs value is their computed value.

(10) Where a Collector:
(a) cannot determine the transaction value of imported goods;
(b) cannot determine their identical goods value;
(c) cannot determine their similar goods value;
(d) where they are request goods, cannot determine any of their deductive values;
(e) where they are not request goods:
(i) cannot determine their deductive (contemporary sales) value; and
(ii) cannot determine their deductive (later sales) value; and

(f) where they are exporter's goods, cannot determine their computed value;

their customs value is their fall-back value.

Inability to determine a value of imported goods by reason of insufficient or unreliable information

160. (1) Where a Collector is not satisfied that there is sufficient reliable information available to the Collector, being information of a kind referred to in subsection (2), to enable him or her to determine a value of imported goods in accordance with a provision of this Division for determining their customs value, the Collector may determine, in writing, that he or she is not so satisfied and the Collector shall thereupon be taken to be unable to determine that first-mentioned value.

(2) Where a Collector is not satisfied that there is sufficient reliable information available to the Collector to enable him or her to determine the quantity and correctness of any amount that is required to be taken into account in determining a value of those goods in accordance with a provision of this Division for determining the customs value of imported goods, then:

(a) where that amount would ordinarily form part of their customs value under the particular valuation method set out in that provision—the Collector shall determine, in writing, that he or she is not so satisfied and the Collector shall thereupon be taken to be unable to use that method;

(b) where that amount would ordinarily be deducted from the amount that would otherwise be their customs value under the particular valuation method set out in that provision:

(i) if the Collector determines, in writing, that he or she is not so satisfied and that he or she does not desire to use the method—the Collector shall thereupon be taken to be unable to use that method; and

(ii) if the Collector determines, in writing, that he or she is not so satisfied but that he or she desires to use the method—the Collector may use the method but no deduction shall be allowed on account of that amount.

Transaction value

161. (1) The transaction value of imported goods is an amount equal to the sum of their adjusted price in their import sales transaction and of their price related costs to the extent that those costs have not been taken into account in determining the price of the goods.

(2) In this section:

"adjusted price", in relation to imported goods, means the price of the goods determined by a Collector who deducts from the amount that, but for this subsection, would be the amount of that price, such amounts as the Collector considers necessary to take account of the following matters:

(a) deductible financing costs in relation to the goods;

(b) any costs that the Collector is satisfied:

(i) are payable for the assembly, erection, construction or maintenance of, or any technical assistance in respect of, the goods;

(ii) are incurred after importation of the goods into Australia; and

(iii) are capable of being accurately quantified by reference to the import sales transaction relating to the goods;

(c) Australian inland freight and Australian inland insurance in relation to the goods;

(d) deductible administrative costs in relation to the goods;

(e) overseas freight and overseas insurance in relation to the goods.

Identical goods value

161A. (1) The identical goods value of imported goods is their value calculated as if the value of each of their units were:

(a) the unit price of comparable identical goods; or

(b) if, because 2 or more lots of goods are treated as comparable identical goods, there are 2 or more such unit prices—the lower or lowest of those unit prices.

(2) In this section:

"comparable identical goods", in relation to imported goods, means identical goods that a Collector is satisfied:

(a) were exported to Australia about the same time as the imported goods; and

(b) either:

(i) were sold in the same, or substantially the same, quantities, as the imported goods in an import sales transaction at the same trade level as the import sales transaction of the imported goods; or

(ii) are of a kind that reasonable inquiry by the Collector has not shown to be so sold;

"unit price", in relation to comparable identical goods, means their transaction value:

(a) adjusted to such extent as a Collector considers necessary so that that value is what it would have been if:

(i) their foreign inland freight and foreign inland insurance had been what that freight and insurance would have been if the goods had been transported, and only transported, over the distances over which, and in the modes in which, the imported goods with which they are comparable identical goods were transported;

(ii) the trade levels of the import sales transactions of the comparable identical goods had been those of the import sales transaction of the imported goods; and

(iii) the comparable identical goods had been sold in their import sales transactions in the quantity in which the imported goods were sold in their import sales transaction; and

(b) divided by the number of units of the comparable identical goods.

Similar goods value

161B. (1) The similar goods value of imported goods is their value calculated as if the value of each of their units were:

(a) the unit price of comparable similar goods; or

(b) if, because 2 or more lots of goods are treated as comparable similar goods, there are 2 or more such unit prices—the lower or lowest of those unit prices.

(2) In this section:

"comparable similar goods", in relation to imported goods, means similar goods that a Collector is satisfied:

(a) were exported to Australia about the same time as the imported goods; and

(b) either:

(i) were sold in the same, or substantially the same, quantities, as the imported goods in an import sales transaction at the same trade level as the import sales transaction of the imported goods; or

(ii) are of a kind that reasonable inquiry by the Collector has not shown to be so sold;

"unit price", in relation to comparable similar goods, means their transaction value:

(a) adjusted to such extent as a Collector considers necessary so that that value is what it would have been if:

(i) their foreign inland freight and foreign inland insurance had been what that freight and insurance would have been if the goods had been transported, and only transported, over the distances over which, and in the modes in which, the imported goods with which they are comparable similar goods were transported;

(ii) the trade levels of the import sales transactions of the comparable similar goods had been those of the import sales transaction of the imported goods; and

(iii) the comparable similar goods had been sold in their import sales transactions in the quantity in which the imported goods were sold in their import sales transaction; and

(b) divided by the number of units of the comparable similar goods.

Deductive (contemporary sales) value

161C. (1) The deductive (contemporary sales) value of imported goods is their value calculated as if the value of each of their units were the unit price of comparable goods sold in the reference sale or sales.

(2) In this section:

"contemporary sale", in relation to comparable goods comparable with imported goods, means a sale known to a Collector of the comparable goods in Australia in the condition in which they were imported, being a sale:

(a) at about the same time as the time of importation of the imported goods;

(b) at the first trade level at which the comparable goods were sold after their importation;

(c) in circumstances where, in the opinion of the Collector, the purchaser of the comparable goods:

(i) was not, at the time of the sale, related to the vendor of the comparable goods; and

(ii) did not incur any production assist costs in relation to the comparable goods; and

(d) that was, in the opinion of the Collector, a sale of a sufficient number of units of comparable goods as to permit an appropriate determination of their price per unit;

"reference sale", in relation to comparable goods, means:

(a) where there was only one contemporary sale of the goods—that sale;

(b) where:

(i) there were 2 or more such sales; and

(ii) the comparable goods were sold in those sales at the one unit price;

each of those sales;

(c) where:

(i) there were 2 or more such sales;

(ii) the comparable goods were sold in those sales at 2 or more unit prices; and

(iii) a higher number of units of comparable goods were sold in those sales at one of those unit price than were sold in those sales at any other single particular unit price;

the sale, or each of the sales, in which comparable goods were sold at the particular unit price first-mentioned in subparagraph (iii);

(d) where:

(i) there were 2 or more such sales;

(ii) the comparable goods were sold in those sales at 2 or more unit prices; and

(iii) an equal number of units of comparable goods were sold in those sales at each of those unit prices;

the sale or sales in which the comparable goods were sold at the lower or lowest of the unit prices; and

(e) where:

(i) there were 2 or more such sales;

(ii) the comparable goods were sold in those sales at 2 or more unit prices; and

(iii) an equal number of units of comparable goods were sold in those sales at 2 or more of those unit prices and that number was not exceeded by the number of units of comparable goods sold in those sales at any other single particular unit price;

the sale, or sales, at which comparable goods were sold at the lower or lowest of the unit prices first-mentioned in subparagraph (iii);

"unit price", in relation to comparable goods sold in a contemporary sale, means the price of the goods in that sale:

(a) reduced by the sum of value unrelated amounts, deductible administrative costs, and deductible financing costs, in relation to the comparable goods; and

(b) divided by the number of units of the comparable goods.

(3) The following example illustrates the operation of paragraph (c) of the definition of "reference sale" in subsection (2):

Facts:

There were 2 contemporary sales of 5 units of comparable goods at a unit price of $100.

There were 6 contemporary sales of 3 units of comparable goods at a unit price of $40.

There was one contemporary sale of 4 units of comparable goods at a unit price of $40.

There was one contemporary sale of 7 units of comparable goods at a unit price of $60.

There were 3 contemporary sales of 2 units of comparable goods at a unit price of $60.

This means that:

10 units of comparable goods were sold in contemporary sales at $100.

22 units of comparable goods were sold in contemporary sales at $40.

13 units of comparable goods were sold in contemporary sales at $60.

Result:

More units of comparable goods were sold in contemporary sales at $40 than were sold in such sales at any other unit price.

Therefore, the reference sales are the sales at the unit price of $40.

(4) The following example illustrates the operation of paragraph (e) of the definition of "reference sale" in subsection (2):

Facts:

There was one contemporary sale of 10 units of comparable goods at a unit price of $60.

There were 2 contemporary sales of 2 units of comparable goods at a unit price of $20.

There was one contemporary sale of 6 units of comparable goods at a unit price of $20.

There were 8 contemporary sales of 1 unit of comparable goods at a unit price of $80.

There was one contemporary sale of 5 units of comparable goods at a unit price of $70.

There were 2 contemporary sales of 2 units of comparable goods at a unit price of $70.

There were 2 contemporary sales of 1 unit of comparable goods at a unit price of $50.

There were 2 contemporary sales of 4 units of comparable goods at a unit price of $50.

Result:

An equal number of units of comparable goods (10) were sold in contemporary sales at 3 unit prices ($60, $20, $50).

This number is not exceeded by 8 units of comparable goods sold in contemporary sales at $80 or by 9 units of comparable goods sold in contemporary sales at $70.

Therefore, reference sales are the sales at the unit price of $20.

Deductive (later sales) value

161D. **(1)** The deductive (later sales) value of imported goods is their value calculated as if the value of each of the units were the unit price of comparable goods sold in the reference sale or sales.

(2) In this section:

"later sale", in relation to comparable goods compared with imported goods, means a sale known to a Collector of the comparable goods in Australia in the condition in which they were imported, being a sale:

(a) during the 90 days that began on the day of importation of the imported goods;

(b) at the first trade level at which the comparable goods were sold after their importation;

(c) in circumstances where, in the opinion of the Collector, the purchaser of the comparable goods:

(i) was not, at the time of the sale, related to the vendor of the comparable goods; and

(ii) did not incur any production assist costs in relation to the comparable goods; and

(d) was, in the opinion of the Collector, a sale of a sufficient number of units of comparable goods as to permit an appropriate determination of their price per unit;

"reference sale", in relation to comparable goods, means:

(a) where there was only one later sale of the goods—that sale;

(b) where there were 2 or more such sales and one of them was on an earlier day than the other or others—that sale; or

(c) where there were 2 or more such sales on a common day and no such sale occurred on an earlier day:

(i) if one of the sales on the common day was of a higher number of units of the comparable goods than the other or others on the common day—that sale of a higher number; or

(ii) if 2 or more of the sales on the common day were of the same number of units of comparable goods and no other sale on the common day was of a higher number of such units—whichever of those 2 or more sales of the same number of units was the sale in which comparable goods were sold at the lower or lowest unit price;

"unit price", in relation to comparable goods sold in a later sale, means the price of the goods in that sale:

(a) reduced by the sum of value unrelated amounts, deductible administrative costs, and deductible financing costs, in relation to the comparable goods; and

(b) divided by the number of units of the comparable goods.

Deductive (derived goods sales) value

161E. **(1)** The deductive (derived goods sales) value of imported goods is their value calculated as if the value of each of their units were the unit price of derived goods derived from them sold in the reference sale or sales.

(2) In this section:

"derived goods", in relation to imported goods, means the imported goods after they have been assembled, packaged or further processed in Australia;

"derived goods sale", in relation to derived goods derived from imported goods, means a sale known to a Collector of derived goods in Australia, being a sale:

(a) during the 90 days that began on the day of importation of the imported goods;

(b) at the first trade level at which the derived goods were sold after that importation;

(c) in circumstances where, in the opinion of the Collector, the purchaser of the derived goods:

(i) was not related to the vendor of the derived goods at the time of the sale; and

(ii) did not incur any production assist costs in relation to the derived goods; and

(d) that was, in the opinion of the Collector, a sale of a sufficient number of units of derived goods as to permit an appropriate determination of the price per unit of the goods;

"reference sale", in relation to derived goods, means:

(a) where there was only one derived goods sale—that sale;

(b) where:

(i) there were 2 or more such sales; and

(ii) derived goods were sold in those sales at the one unit price;

each of those sales;

(c) where:

(i) there were 2 or more such sales;

(ii) the derived goods were sold in those sales at 2 or more unit prices; and

(iii) a higher number of units of derived goods were sold in those sales at one of those unit prices than were sold in those sales at any other single particular unit price;

the sale, or each of the sales, in which derived goods were sold at the particular unit price first-mentioned in subparagraph (iii);

(d) where:

(i) there were 2 or more such sales;

(ii) derived goods were sold in those sales at 2 or more unit prices; and

(iii) an equal number of units of derived goods were sold in those sales at each of those unit prices;

the sale or sales in which the derived goods were sold at the lower or lowest of the unit prices; and

(e) where:

(i) there were 2 or more such sales;

(ii) derived goods were sold in those sales at 2 or more unit prices; and

(iii) an equal number of units of derived goods were sold in those sales at 2 or more of those unit prices and that number was not exceeded by the number of units of derived goods sold in those sales at any other single particular unit price;

the sale, or sales, at which derived goods were sold at the lower or lowest of the unit prices first-mentioned in subparagraph (iii);

"unit price", in relation to derived goods derived from imported goods and sold in a derived goods sale, means the price of the derived goods in that sale:

(a) reduced by the sum of:

(i) value unrelated amounts, in relation to the derived goods;

(ii) deductible administrative costs in relation to the derived goods;

(iii) deductible financing costs in relation to the derived goods; and

(iv) the amount of the value added to the derived goods that is attributable to the assembly, packaging or further processing of the imported goods in Australia; and

(b) divided by the number of units of the derived goods.

Computed value

161F. (1) The computed value of imported goods is such part of the sum of the following amounts as a Collector considers should be apportioned to their production:

(a) Australian arranged material costs;

(b) Australian arranged subsidiary costs;

(c) Australian arranged tooling costs;

(d) Australian arranged work costs;

(e) the value of all other goods used in their production and not included in paragraphs (a) to (d), inclusive;

(f) the costs, charges and expenses incurred by their producer in relation to their production and not included in paragraphs (a) to (e), inclusive;

(g) the profit and expenses (including all costs, direct or indirect, of marketing but not including costs and expenses included in paragraphs (a) to (f), inclusive) that are usually added to the sale for export to Australia of goods of the same class as the imported goods from the country of export of the imported goods, being a sale of goods by their producer to a purchaser who is not, at the time of sale, related to the producer;

(h) packing costs for materials and labour incurred in respect of the goods (including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the goods for their exportation from a foreign country or otherwise placing them in the condition in

which they are imported into Australia but not including the costs of any exempted pallet or exempted container concerned in their exportation), being costs that are not included in paragraphs (a) to (g), inclusive;

(j) foreign inland freight and foreign inland insurance that is usually added to a sale referred to in paragraph (g) and that is not included in paragraphs (a) to (h), inclusive.

(2) In this section, **"Australian arranged material costs"**, **"Australian arranged subsidiary costs"**, **"Australian arranged tooling costs"** and **"Australian arranged work costs"**, in relation to imported goods, have the meanings that **"purchaser's material costs"**, **"purchaser's subsidiary costs"**, **"purchaser's tooling costs"** and **"purchaser's work costs"** respectively, would have, in relation to imported goods, if the references in the 4 last-mentioned definitions to purchaser were references to a person in Australia.

Fall-back value

161G. The fall-back value of imported goods is such value as a Collector determines, having regard to the other methods of valuation under this Division in the order in which those methods would ordinarily be considered under section 159 and of such other matters as the Collector considers relevant, but not having regard to any of the following matters:

(a) the selling price in Australia of goods produced in Australia;

(b) any system that provides for the acceptance for Customs purposes of the higher of 2 alternative values;

(c) the price of goods on the domestic market of the country from which the imported goods were exported;

(d) the cost of production of goods, other than the computed value of identical goods or similar goods;

(e) the price of goods sold for export to a country other than Australia and not imported into Australia;

(f) any system that provides for minimum values for Customs purposes;

(g) arbitrary or fictitious values.

When transaction value unable to be determined

161H. (1) Without limiting section 160, a Collector cannot determine the transaction value of imported goods for the purposes of this Division, including, but without limiting the generality of the foregoing, section 161A or 161B, if the Collector:

(a) after reasonable inquiry, is not aware of any import sales transaction in relation to the goods;

(b) has, in accordance with subsection (3), (5) or (7), decided that the transaction value of the goods cannot be determined; or

(c) is satisfied that the disposition or use of the goods by the purchaser is subject to restrictions, not being restrictions of the following kinds:

(i) restrictions imposed or required by, or by any public officer or authority acting in accordance with, any law in force in Australia;

(ii) restrictions that limit the geographical area in which the goods may be sold;

(iii) restrictions that do not substantially affect the commercial value of the goods.

(2) Where, in relation to goods required to be valued, a Collector:

(a) is satisfied that the purchaser and the vendor of imported goods were, at the time of the goods' import sales transaction, related persons; and

(b) considers that that relationship may have influenced the price of the goods;

the Collector shall, by notice in writing served, personally or by post, on the purchaser of the goods:

(c) advise the purchaser of:

(i) the view that the Collector has formed of the possible effect on the price of the goods of the relationship between the purchaser and the vendor;

(ii) the reasons for forming that view; and

(iii) the fact that, because of that view, the Collector may be required to decide under subsection (3) that the transaction value of the goods cannot be determined; and

(d) invite the purchaser to put before the Collector, within a period specified in the notice (not being a period of less than 28 days), such further information as the purchaser considers might serve to satisfy the Collector as to any of the matters set out in subsection (3).

(3) On the expiration of the period specified in a notice under subsection (2), the Collector shall, unless the purchaser of the imported goods has satisfied the Collector that:

(a) a relationship between the purchaser and the vendor of the goods did not influence the price of the goods; or

(b) the amount of the transaction value that would be determined in respect of the goods if the purchaser and the vendor had not been related at the time of the import sales transaction for the goods divided by the number of the units of the goods closely approximates, having regard to all relevant factors:

(i) the unit price within the meaning of section 161A of identical goods that were exported to Australia about the same time as the imported goods;

(ii) the unit price within the meaning of section 161B of similar goods that were exported to Australia about the same time as the imported goods;

(iii) the unit price of identical goods or similar goods sold in a contemporary sale within the meaning of section 161C as determined in accordance with that section; or

(iv) the computed unit price of identical goods or similar goods that were imported into Australia about the same time as the imported goods being the computed value of those identical or similar goods determined in accordance with section 161F divided by the number of units of those identical or similar goods;

be taken to be unable to determine the transaction value of the goods.

(4) Where, in relation to goods required to be valued, a Collector is of the opinion that the price at which the goods were sold in their import sales transaction is different from the price at which goods that are identical goods or similar goods to the first-mentioned goods would normally be sold in an import sales transaction similar to the first-mentioned import sales transaction, the Collector shall, by notice in writing served, personally or by post, on the purchaser:

(a) advise the purchaser of the Collector's opinion; and

(b) require the purchaser to satisfy the Collector, within the period specified in the notice, not being a period of less than 28 days, that the price difference was not designed to obtain a reduction of, or to avoid duty.

(5) On the expiration of the period specified in a notice under subsection (4) in relation to imported goods, the Collector shall, unless the purchaser of the goods to whom the notice was given has satisfied the Collector as required by the notice, be taken to be unable to determine the transaction value of the goods.

(6) Where, in relation to services provided in respect of goods required to be valued, a Collector is of the opinion that the services were provided in relation to the goods under the terms of their import sales transaction at a price different from the price normally paid for the provision of identical or similar services in relation to goods that

are identical goods or similar goods to the first-mentioned goods, sold in an import sales transaction similar to the first-mentioned import sales transaction, the Collector shall, by notice in writing served, personally or by post, on the purchaser:

(a) advise the purchaser of the Collector's opinion; and

(b) require the purchaser to satisfy the Collector, within the period specified in the notice, not being a period of less than 28 days, that the price difference was not designed to obtain a reduction of, or to avoid duty.

(7) On the expiration of the period specified in a notice under subsection (6) in relation to imported goods, the Collector shall, unless the purchaser of the goods to whom the notice was given has satisfied the Collector as required by the notice, be taken to be unable to determine the transaction value of the goods.

Value of goods to be in Australian currency

161J. (1) Where an amount that is, in accordance with this Division, required to be taken into account for the purpose of ascertaining a value of any imported goods is an amount in a currency other than Australian currency, the amount to be so taken into account shall be the equivalent in Australian currency of that amount, ascertained according to the ruling rate of exchange in relation to that other currency in respect of the day of exportation of the goods.

(2) For the purposes of this section, the CEO may specify, by notice published in the *Gazette*:

(a) a rate that is to be deemed to be, or to have been, the ruling rate of exchange, in relation to any currency, in respect of a day, or of each day occurring during a period, preceding the day of publication of the notice; or

(b) a rate that is to be deemed to be, or to have been, the ruling rate of exchange, in relation to any currency, in respect of each day occurring during a period commencing on the day of publication of the notice, or on an earlier day specified in the notice, and ending on the revocation of the notice;

after having regard:

(c) where the ruling rate of exchange is specified in respect of a day—to commercial rates of exchange that prevailed on or about that day;

(d) where the ruling rate of exchange is specified in respect of a period commencing before the day of publication of the notice—to commercial rates of exchange that prevailed during so much of that period as preceded the day of publication of the notice; and

(e) where the ruling rate of exchange is specified in respect of any other period—to commercial rates of exchange that last prevailed before the publication of that notice.

(3) At any time, the ruling rate of exchange in relation to a particular foreign currency, in respect of a particular day, shall be:

(a) if a rate of exchange has been specified at that time under subsection (2) as the ruling rate of exchange, in relation to that currency, in respect of that day, or in respect of a period that includes that day—the rate so specified; and

(b) if a rate of exchange has not been so specified at that time—such a rate of exchange as the CEO determines to be the ruling rate of exchange, in relation to that currency, in respect of that day, after having regard to commercial rates of exchange prevailing on or about that day and to such other matters as the CEO considers relevant.

(4) In this section:

"day of exportation", in relation to imported goods, means:

(a) where the goods were exported by post from the place of export and a Collector is satisfied as to the day of posting—that day;

(b) where the goods departed or were transported from their place of export in any other way and a Collector is satisfied as to the day of their departure or transportation—that day; and

(c) in any other case—a day determined by the Collector.

Owner to be advised of value of goods

161K. **(1)** Where the CEO or a Collector has determined the customs value of goods in accordance with this Division, the CEO or the Collector shall cause the value to be recorded on the entry in respect of them or otherwise advise their owner of the amount.

(2) Where a Collector signifies, in a manner prescribed by the regulations, his or her acceptance of an estimate of the value of the goods, whether that estimate appears on the entry in respect of those goods or in any other statement of information provided in respect of those goods, the Collector shall, by so signifying, be taken for the purposes of subsection (1) to have determined the customs value of the goods and to have advised their owner of that amount.

(3) If, within 28 days after being advised under subsection (1) of the customs value of goods determined in accordance with this Division, an owner of the goods requests a Collector, in writing, to give the owner particulars of the valuation, the Collector shall, within 28 days after the making of the request, give the owner a notice in writing setting out:

(a) the method by which the customs value of the goods was determined;

(b) the findings of material questions of fact relating to that determination, the evidence or other material on which those findings were based and the reasons for that determination; and

(c) the calculations by which the determination of the value was made and the information on which those calculations were based.

(4) Nothing in this section requires, or permits, the giving of information that:

(a) relates to the personal affairs or business affairs of a person, other than the person making the request because of which information was given; and

(b) is information:

(i) that was supplied in confidence;

(ii) the publication of which would reveal a trade secret;

(iii) that was given in compliance with a duty imposed by an enactment; or

(iv) the giving of which in accordance with the request would be in contravention of an enactment, being an enactment that expressly imposes on the person to whom the information was given a duty not to divulge or communicate to any person, or to any person other than a person included in a prescribed class of persons, or except in prescribed circumstances, information of that kind.

(5) In this section, **"enactment"** has the same meaning as in the *Administrative Decisions (Judicial Review) Act 1977*.

Review of determinations and other decisions

161L. (1) At any time after the making of a determination or other decision by an officer under this Division in relation to goods, the CEO may review the determination or other decision and may:

(a) affirm the determination or other decision;

(b) vary the determination or other decision; or

(c) revoke the determination or other decision and make any other determination or decision that is required to be made for the purpose of determining the customs value of the goods in accordance with this Division.

(2) Where, by reason that the CEO, under subsection (1), has varied or revoked a determination or other decision of an officer or has made a determination or other decision that is required to be made by reason of the revocation of a determination or other decision of an officer:

(a) an amount of duty that was levied is less than the amount that should have been levied; or

(b) an amount of duty that was refunded is greater than the amount that should have been refunded;

section 165 applies in relation to any demand by a Collector for the payment of the amount of duty so short levied or so erroneously refunded, as the case may be.

(3) In this section, **"officer"** means a Collector or a delegate of the CEO.

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

Delivery of goods upon giving of security or undertaking for payment of duty

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 subsection.

(2A) Without limiting the generality of subsection (2), regulations under that subsection may provide that conditions, restrictions or requirements specified in the permission granted under subsection (1) in relation to goods are to be complied with in relation to the goods.

(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 subsection (1), the duty is not payable if:

(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 CEO, 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 CEO, 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.

Delivery of goods on the giving of a general security or undertaking for payment of duty

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;

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

(1A) Without limiting the generality of subsection (1), regulations under that subsection may be regulations that apply to goods if:

(a) the goods are specified in an instrument authorised by the regulations; and

(b) conditions, restrictions or requirements specified in that instrument are complied with in respect of the goods.

(1B) Without limiting the generality of paragraph (1A) (b), conditions, restrictions or requirements referred to in that paragraph that apply to goods may specify, or relate to:

(a) the time during which the goods may remain in Australia; or

(b) the purposes for which the goods may be used while they are in Australia.

(2) The CEO 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 CEO 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 CEO.

(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 CEO, 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.

(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 (5) (b) or within such further period as is allowed by the CEO 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 CEO or the Regional Director for a State or Territory.

Pallets used in international transport

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 subsections (5) and (6) of section 162A.

Refunds etc. of duty

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.

(1A) The regulations may prescribe the amount, or the means of determining the amount, of any refund, rebate or remission of duty that may be made for the purposes of subsection (1).

(1B) A Collector shall refuse to consider an application for a refund of duty paid in respect of goods if:

(a) the goods are not goods in respect of which the same entry has been given under section 68 and subsection 71A (7); or

(b) the fee payable under subsection (1C) in respect of the application has not been paid.

(1C) Subject to subsection (1D), a fee of $200, or, if a higher amount is prescribed, that higher amount, is payable in respect of an application made after 13 May 1987 for a refund of duty paid in respect of goods.

(1D) A fee is not payable under subsection (1C):

(a) in the circumstances specified in paragraph 126 (a), (b), (c), (d), (f), (g), (ga), (h), (j), (k), or (m) of the Customs Regulations as in force at the commencement of this subsection;

(b) where an officer assisted in making up the entry in respect of which the application for a refund of duty is made;

(c) where an officer assessed the duty payable;

(d) where the duty was paid under protest;

(e) where the duty was paid as a consequence of advice given, or a ruling made, by an officer;

(f) where all duty amounts were paid in good faith;

(g) where the overpayment of duty was beyond the control of the applicant for the refund; or

(h) in such other circumstances as may be specified in the regulations.

(2) In this section, **"duty"** includes an amount paid to a Collector in respect of duty that may become payable.

Rebate of duty in respect of diesel fuel used for certain purposes

164. (1) A rebate is, subject to subsections (2) and (3) and to such conditions and restrictions as are prescribed (being conditions and restrictions that relate to goods generally, to goods included in a class of goods that includes diesel fuel or to diesel fuel only), payable to a person who purchases diesel fuel for use by him:

(a) in mining operations (otherwise than for the purpose of propelling a road vehicle on a public road);

(aa) in primary production (otherwise than for the purpose of propelling a road vehicle on a public road);

(b) at residential premises to generate electricity for use in:

(i) providing food and drink for;

(ii) providing lighting, heating, air-conditioning, hot water or similar amenities for; or

(iii) meeting other domestic requirements of;

residents of the premises;

(c) at a hospital or nursing home or at any other institution providing medical or nursing care; or

(d) at a home for aged persons.

(1A) An application under subsection (1) for rebate in respect of diesel fuel shall not be made before duty is paid on the diesel fuel.

(2) Where a person:

(a) purchases diesel fuel for use by him in a manner referred to in subsection (1); and

(b) uses the diesel fuel otherwise than in a manner referred to in that subsection;

then:

(c) if rebate has not been paid under subsection (1) to the person in respect of the diesel fuel—rebate is not payable to the person in respect of the diesel fuel; or

(d) if rebate has been paid under subsection (1) to the person in respect of the diesel fuel—the person shall, on demand in writing made by the CEO, pay to the Commonwealth an amount equal to the amount of rebate paid to him in respect of the diesel fuel and, if the person fails to pay to the Commonwealth the amount demanded within such period as is

specified in the demand, the amount may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

(3) Subject to subsection (4), a Collector may refuse to consider an application for rebate under this section if:

(a) the application does not relate to diesel fuel purchased for use in a manner referred to in paragraph (1) (b); and

(b) the quantity of diesel fuel in respect of which the application is made is less than 2,000 litres.

(4) A Collector shall not refuse to consider an application made by a person for rebate under this section only because the quantity of diesel fuel in respect of which the application is made is less than 2,000 litres if the application is the first application by the person for rebate under this section.

(4AA) Rebate is not payable to a person in respect of diesel fuel unless the application for the rebate:

(a) is made in accordance with an approved form;

(b) includes such information as is required by the form;

(c) is signed and witnessed in the manner indicated in the form; and

(d) is given to an officer.

(4AB) If an application for rebate in respect of diesel fuel is received under paragraph (4AA) (d) on or after 1 July 1994, rebate is payable only in respect of diesel fuel purchased within 3 years before that application is so received except where the applicant gave notice prior to 1 July 1994 of an intention to make an application on grounds set out in the notice.

(4A) Without limiting the regulations that may be made for the purposes of subsection (1), those regulations may provide that, subject to subsection (4B), rebate is not payable to a person in respect of diesel fuel purchased by the person unless, when the application for the rebate is given to a Collector, the applicant gives the Collector a document of a kind, containing information of a kind, prescribed by the regulations.

(4B) Where regulations for the purposes of subsection (1) provide that a rebate is not payable to a person in respect of diesel fuel unless the applicant for the rebate gives a Collector a document of a kind prescribed by the regulations for the purposes of subsection (4A), then, notwithstanding those regulations, rebate may be granted to an applicant if a Collector is satisfied that the applicant is unable to give the document because of circumstances beyond the applicant's control.

(4C) Where a Collector is not satisfied that particulars, or estimates, relating to diesel fuel set out in an application by a person for rebate are correct, the Collector may:

(a) refuse to consider an application by that person for rebate the ascertaining of whose amount could be affected by those particulars or estimates; or

(b) approve the payment, as the only rebate referred to in paragraph (a), of such amount as the Collector, without having regard to those particulars or estimates but having regard to such matters relating to the use of diesel fuel by the person as are prescribed, considers to be appropriate.

(4D) If a person who has applied for rebate under this section is to be paid rebate in respect of some or all the diesel fuel to which the application relates, the Collector must inform the person in writing of the amount of rebate payable to the person under the application.

(5) Subject to subsection (5AA), the rebate payable under subsection (1) to a person in respect of any diesel fuel purchased by the person for use in a manner referred to in a paragraph of that subsection is payable at the rate of:

(a) in the case of paragraph (1) (a)—$0.07619 per litre;

(b) in the case of paragraph (1) (aa)—$0.10007 per litre;

(c) in the case of paragraph (1) (b)—$0.07619 per litre;

(d) in the case of paragraph (1) (c)—$0.07619 per litre;

(e) in the case of paragraph (1) (d)—$0.07619 per litre.

(5A) The Minister may, by notice in writing published in the *Gazette*, declare that the rate of rebate payable under subsection (1) to a person in respect of any diesel fuel for use in a manner referred to in a paragraph of that subsection and specified in the notice is, on and after a day specified in the notice, a rate specified in the notice, being a rate higher than the rate specified in subsection (5) in relation to that paragraph, and, where the Minister makes such a declaration, the declaration has effect accordingly.

(5AA) The rebate payable to a person in respect of diesel fuel purchased by the person for use in a manner referred to in a paragraph of subsection (1) is payable at a rate equal to the average of the rates of rebate in relation to that paragraph in force on the last day of each of the 6 months immediately before the month in which the application for the rebate was received by a Collector, being:

(a) in relation to months ending before the commencement of this subsection—the rates under declarations made under subsection 164 (5A) of this Act as in force immediately before the commencement of this subsection; or

(b) in relation to other months—the rates in force under declarations made under subsection (5A).

(5AB) Where an average of rates referred to in subsection (5AA) has more than 5 decimal places, the rate equal to that average shall, for the purposes of that subsection, be taken to be:

(a) if the average calculated to 6 decimal places would end in a number less than or equal to 4—a rate equal to the average calculated to 5 decimal places; or

(b) if the average calculated to 6 decimal places would end in a number greater than 4—a rate equal to the average calculated to 5 decimal places increased by 0.00001.

(5B) The provisions of sections 48 (other than paragraphs (1) (a) and (b) and subsection (2)), 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to notices under subsection (5A) as if in those provisions references to regulations were references to notices, references to a regulation were references to a notice and references to repeal were a reference to revocation.

(6) Rebates payable under subsection (1) are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

(7) In this section:

agricultural use limestone means limestone for use in the de-acidification of soil in any agricultural activity other than the activity referred to in paragraph (t) of the definition of ***agriculture.***

"agriculture" means:

(a) the cultivation of the soil; or

(b) the cultivation or gathering in of crops; or

(c) the rearing of live-stock; or

(d) viticulture, horticulture, pasturage or apiculture;

and includes:

(e) the shearing or cutting of hair or fleece of live-stock, or the milking of live-stock, carried out on an agricultural property; or

(f) frost abatement carried out on an agricultural property; or

(g) the transporting of live-stock to an agricultural property:

(i) for the purpose of rearing; or

(ii) for the purpose of agistment; or

(h) the return journey from a place referred to in paragraph (g) of the vehicles or equipment used in transporting the live-stock, if that journey is for the purpose of later carrying out the

transportation referred to in paragraph (g) or for the backloading of raw materials or consumables for use in a core agricultural activity; or

(i) the mustering of live-stock undertaken:

(i) by a person who carries on a core agricultural activity; or

(ii) by a person contracted by that person to carry out the mustering;

on the agricultural property where the core agricultural activity is carried on; or

(j) hay baling on the agricultural property where the hay was cultivated; or

(k) the planting or tending of trees on an agricultural property otherwise than for the purpose of felling; or

(l) any activity undertaken for the purpose of soil or water conservation:

(i) by a person who carries on a core agricultural activity; or

(ii) by a person contracted by that person to carry out the first-mentioned activity;

on the agricultural property where the core agricultural activity is carried on; or or

(la) the carrying out of firefighting activities:

(i) by a person who carries on a core agricultural activity; or

(ii) by a person contracted by that person to carry out the first-mentioned activity;

on the agricultural property where the core agricultural activity is carried on or at a place adjacent to that place; or

(m) the construction or maintenance of fences undertaken:

(i) by a person who carries on a core agricultural activity; or

(ii) by a person contracted by that person to carry out the construction or maintenance;

on the agricultural property where the core agricultural activity is carried on; or

(n) the construction or maintenance of firebreaks undertaken:

(i) by a person who carries on a core agricultural activity; or

(ii) by a person contracted by that person to carry out the construction or maintenance;

on the agricultural property where the core agricultural activity is carried on or at a place adjacent to that place; or

(o) the service, maintenance or repair of vehicles or equipment for use in an agricultural activity if the service, maintenance or repair:

(i) is carried out on an agricultural property where a core agricultural activity is carried on; and

(ii) is carried out by the person who carries on the first-mentioned agricultural activity or by a person contracted by that person to carry out the service, maintenance or repair; or

(p) the construction or maintenance of sheds, pens, silos or silage pits for use in an agricultural activity if the construction or maintenance:

(i) is carried out on an agricultural property where a core agricultural activity is carried on; and

(ii) is carried out by the person who carries on the first-mentioned agricultural activity or by a person contracted by that person to carry out the construction or maintenance; or

(q) the construction or maintenance of dams, water tanks, water troughs, water channels, irrigation systems or drainage systems including, without limiting the generality of the foregoing, water pipes and water piping for use in a core agricultural activity if the construction or maintenance:

(i) is carried out on the agricultural property where the core agricultural activity is carried on; and

(ii) is carried out by the person who carries on the core agricultural activity or by a person contracted by that person to carry out the construction or maintenance; or

(r) the carrying out of earthworks for use in a core agricultural activity if the earthworks:

(i) are carried out on the agricultural property where the core agricultural activity is carried on; and

(ii) are carried out by the person who carries on the core agricultural activity or by a person contracted by that person to carry out the earthworks; or

(s) searching for ground water solely for use in an agricultural activity, or the construction or maintenance of facilities for the extraction of such water, solely for that use, if the searching, construction or maintenance:

(i) is carried out on an agricultural property where a core agricultural activity is carried on, or at a place adjacent to that property; and

(ii) is carried out by the person who carries on the first-mentioned agricultural activity or by a person contracted by that person to carry out the searching, construction or maintenance; or

(t) any activity undertaken for the purposes of soil or water conservation:

(i) by a person who carries on a core agricultural activity within an approved catchment area; or

(ii) by a person contracted by that person to carry out the first-mentioned activity;

within the approved catchment area; or

(u) the pumping of water solely for use in an agricultural activity if the pumping:

(i) is carried out on an agricultural property where a core agricultural activity is carried on, or at a place adjacent to that property; and

(ii) is carried out by the person who carries on the first-mentioned agricultural activity or by a person contracted by that person to carry out the pumping, other than a person so contracted that is a Commonwealth authority or a State or Territory authority; or

(v) the supply of water solely for use in an agricultural activity if:

(i) the supply is to an agricultural property where a core agricultural activity is carried on; and

(ii) the water comes from that property or a place adjacent to that property; and

(iii) the supply is carried out by the person who carries on the first-mentioned agricultural activity or by a person contracted by that person to carry out the supply, other than a person so contracted that is a Commonwealth authority or a State or Territory authority; or

(w) the storage of produce of a core agricultural activity on an agricultural property where a core agricultural activity is carried on; or

(x) the packing, or the prevention of deterioration, of the produce of a core agricultural activity if:

(i) the packing, or the prevention of deterioration, of the produce is carried out on an agricultural property where a core agricultural activity is carried on; and

(ii) there is no physical change to the produce; and

(iii) the packing, or the prevention of deterioration, of the produce does not constitute a processing of the produce; or

(y) weed, pest or disease control undertaken:

(i) by a person who carries on a core agricultural activity; or

(ii) by a person contracted by that person to carry out the weed, pest or disease control;

on the agricultural property where the core agricultural activity is carried on; or

(z) the removal of waste products of an agricultural activity from the agricultural property where the activity is carried on; or

(za) the disposal of waste products of an agricultural activity on the agricultural property where the activity is carried on; or

(zb) hunting or trapping that is carried on for the purposes of a business, including the storage of any carcasses or skins obtained from the hunting or trapping; or

(zba) the use of diesel fuel at residential premises in:

(i) providing food and drink for; or

(ii) providing lighting, heating, air-conditioning, hot water or similar amenities for; or

(iii) meeting other domestic requirements of;

residents of the premises if:

(iv) the use is by a person who carries on a core agricultural activity; and

(v) the residential premises are situated on the agricultural property where that activity is carried on;

but does not include:

(zc) fishing operations or forestry; or

(zd) an activity referred to in any one of paragraphs (a) to (za) or paragraph (zba) unless the activity is carried out for the purposes of, or for purposes that will directly benefit, a business undertaken to obtain produce for sale.

Note: The agricultural activities referred to in paragraph (i), (l), (la), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v) or (y) are given an expanded meaning by subsection (8).

"agricultural activity" means an activity referred to in any one of paragraphs (a) to (za) of the definition of **"agriculture"** if that activity is carried out for the purposes of, or for purposes that will directly benefit, a business undertaken to obtain produce for sale;

approved catchment area means an area:

(a) in respect of which a soil or water conservation plan has been adopted by the persons who carry on core agricultural activities within that area; or

(b) in respect of which a soil or water conservation agreement has been made between the persons who carry on core agricultural activities within that area;

"core agricultural activity" means an activity referred to in paragraph (a), (b), (c) or (d) of the definition of **"agriculture"** if that activity is carried out for the purposes of, or for purposes that will directly benefit, a business undertaken to obtain produce for sale;

"duty" has the same meaning as in subsection 163 (1);

"earthworks" means:

(a) the forming or maintenance of levee banks or windbreaks; or

(b) contour banking; or

(c) land levelling or land grading;

"fish" means freshwater or salt-water fish, and includes turtles, dugong, crustacea, molluscs or any other living resources of the sea or of the sea-bed;

"fishing operations" means:

(a) the taking, catching or capturing of fish;

(b) the farming of fish;

(c) the processing of fish on board vessels;

(d) pearling operations;

(e) the operation of a dedicated mother vessel in connection with the activities referred to in paragraphs (a), (b), (c) or (d); or

(f) the undertaking:

(i) of voyages to or from a port by a vessel for the purposes of refitting or repairing the vessel, or its equipment, for purposes that are integral to the performance of an activity referred to in paragraph (a), (b), (c), (d) or (e); or

(ii) trials in connection with such a refit or repair of a vessel or of its equipment;

but does not include any activity referred to in paragraph (a), (b), (c), (d), (e) or (f) that is conducted, in whole or in part:

(g) otherwise than for the purposes of a business; or

(h) for business purposes connected with recreation, sport or tourism;

"forestry" means:

(a) the planting or tending, in a forest or plantation, of trees intended for felling; or

(b) the thinning or felling, in a forest or plantation, of standing timber;

and includes:

(c) the transporting, milling or processing, in a forest or plantation, of timber felled in the forest or plantation;

(d) the milling of timber at a sawmill or chipmill that is not situated in the forest or plantation in which the timber was felled;

(e) where timber is milled at a sawmill or chipmill that is not situated in the forest or plantation in which the timber was felled—the transporting of the timber from the forest or plantation in which it was felled to the sawmill or chipmill; or

(f) the making and maintaining in a forest or plantation referred to in paragraph (a) or (b) of a road that is integral to the activities referred to in paragraph (a), (b) or (c);

"horticulture" includes:

(a) the cultivation or gathering in of fruit, vegetables, herbs, edible fungi, nuts, flowers, trees, shrubs or plants;

(b) the propagation of trees, shrubs or plants; or

(c) the production of seeds, bulbs, corms, tubers or rhizomes;

"live-stock" includes any animal reared for the production of food, fibres, skins, fur or feathers, or for its use in the farming of land;

minerals means minerals in any form, whether solid, liquid or gaseous and whether organic or inorganic, except:

(a) sand, sandstone, soil, slate, clay (other than bentonite or kaolin), basalt, granite, gravel or water; or

(b) limestone (other than agricultural use limestone).

"mining operations" means:

(a) exploration, prospecting, or mining for minerals, or the removal of overburden and other activities undertaken in the preparation of a site to enable mining for minerals to commence; or

(b) the dressing or beneficiation of minerals, or ores bearing minerals, as an integral part of operations for their recovery;

and includes:

(c) if minerals, or ores bearing minerals, are dressed or beneficiated at a place other than the mining site as an integral part of operations for their recovery:

(i) the transporting of the minerals or ores from the mining site to that place; and

(ii) the return journey from that place to the mining site of the vehicles or equipment used in transporting the minerals or ores, if that journey is for the purpose of later carrying out the mining operation referred to in subparagraph (i) or for the backloading of raw materials or consumables for use in a mining operation referred to in paragraph (a) or (b); or

(d) the undertaking:

(i) of voyages to or from an Australian port by a ship that is proposed to be, or that is, used wholly or primarily in carrying out northern mining activities for the purposes of refitting or repairing the ship or its equipment for, or as a result of, carrying out those activities; or

(ii) of trials in connection with such a refit or repair of the ship or its equipment; or

(e) the liquefying of natural gas; or

(f) if natural gas is liquefied at a place other than the mining site—the transporting of the natural gas from the mining site to that place; or

(g) the production of common salt by evaporation; or

(h) the reactivation of carbon for use in the beneficiation of ores bearing gold; or

(i) coal stockpile management for the prevention of the spontaneous combustion of coal if the management is carried out:

(i) by a person who carries on a mining operation referred to in paragraph (a) or (b); or

(ii) by a person contracted by that person to carry out the management;

at the place where the mining operation is carried on; or

(j) the generation of electricity solely for, or the provision of electricity solely to, a mining town if:

(i) the existence of the town is necessary to enable a mining operation referred to in paragraph (a) or (b) to be undertaken; and

(ii) the generation or provision is carried out by the person who carries on the mining operation; or

(k) the rehabilitation before 1 July 1995 of a place at which a mining operation referred to in paragraph (a) or (b) has been carried on if the rehabilitation is carried out by:

(i) the person who carried on the mining operation at the place; or

(ii) a person contracted by that person to carry out the rehabilitation; or

(ka) the rehabilitation of a place affected by a mining operation referred to in paragraph (a) or (b) if the rehabilitation is carried out by:

(i) the person who carried on the mining operation; or

(ii) a person contracted by that person to carry out the rehabilitation; or

(l) searching for ground water solely for use in a mining operation referred to in paragraph (a) or (b), or the construction or maintenance of facilities for the extraction of such water, solely for that use, if the searching, construction or maintenance:

(i) occurs at the place where the mining operation is carried on or at a place adjacent to that place; and

(ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the searching, construction or maintenance; or

(m) the pumping of water solely for use in a mining operation referred to in paragraph (a) or (b) if the pumping:

(i) occurs at the place where the mining operation is carried on or at a place adjacent to that place; and

(ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the pumping; or

(n) the supply of water solely for use in a mining operation referred to in paragraph (a) or (b) if:

(i) the supply is to the place where the mining operation is carried on; and

(ii) the water comes from that place or a place adjacent to that place; and

(iii) the supply is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the supply; or

(o) the construction or maintenance of private access roads for use in a mining operation referred to in paragraph (a) or (b) if the construction or maintenance:

(i) occurs at the place where the mining operation is carried on; and

(ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the construction or maintenance; or

(p) the construction or maintenance of storage dams or tailings dams for use in a mining operation referred to in paragraph (a) or (b) if the construction or maintenance:

(i) occurs at the place where the mining operation is carried on or at a place adjacent to that place; and

(ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the construction or maintenance; or

(q) the construction or maintenance of private airstrips, buildings, plant or equipment for use in a mining operation referred to in paragraph (a) or (b) if the construction or maintenance:

(i) occurs at the place where the mining operation is carried on; and

(ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the construction or maintenance; or

(r) the construction or maintenance of power stations or power lines solely for use in a mining operation referred to in paragraph (a) or (b) if the construction or maintenance:

(i) occurs at the place where the mining operation is carried on; and

(ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the construction or maintenance; or

(s) the removal of waste products of a mining operation referred to in paragraph (a) or (b) from the place where the mining operation is carried on; or

(t) the disposal of waste products of a mining operation referred to in paragraph (a) or (b) at the place where the mining operation is carried on; or

(u) the service, maintenance or repair of vehicles, plant or equipment for use in a mining operation referred to in paragraph (a) or (b) if the service, maintenance or repair:

(i) occurs at the place where the mining operation is carried on; and

(ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the service, maintenance or repair; or

(v) the service, maintenance or repair of transport networks, vehicles or equipment solely for use in a mining operation referred to in paragraph (c) if the service, maintenance or repair is carried out by:

(i) the person who carries on the mining operation; or

(ii) a person contracted by that person to carry out the service, maintenance or repair; or

(w) the use of diesel fuel at residential premises in:

(i) providing food and drink for; or

(ii) providing lighting, heating, air-conditioning, hot water or similar amenities for; or

(iii) meeting other domestic requirements of;

residents of the premises if:

(iv) the use is by a person who carries on a mining operation referred to in paragraph (a) or (b); and

(v) the residential premises are situated at the place where the mining operation is carried on, or at a place adjacent to that place;

but does not include quarrying operations carried on solely for the purpose of obtaining stone for building, road making or similar purposes.

Note: The mining operations referred to in paragraph (i), (k), (l), (m), (n), (o), (p), (q), (r), (u) or (v) are given an expanded meaning by subsection (9).

"mining town" means a town constructed by or on behalf of a person engaged in mining operations, in an area where immediately prior to its construction there was no town, principally to house employees of the person, but does not include a town administered by:

(a) a council that is constituted under local government legislation of a State or Territory; or

(b) an organisation taken to be a council under such legislation;

"northern mining activities" means activities associated with or incidental to, the exploration for, or exploitation of, oil or natural gas in waters within the geographical boundaries of 100° east longitude to 140° east longitude and the equator to 30° south latitude;

"pearling operations" means:

(a) the taking of pearl shell; or

(b) the culture of pearls or pearl shell;

and includes the taking or capturing of trochus, beche-de-mer or green snails;

"primary production" means:

(a) agriculture;

(b) fishing operations; or

(c) forestry;

"processing", in relation to fish, includes:

(a) the cutting up, dismembering, cleaning, sorting or packing of fish;

(b) the preserving or preparing of fish; or

(c) the producing of any substance or article from fish;

"residential premises" means:

(a) premises used as a house; or

(b) other premises at which at least one person resides;

but does not include:

(c) premises used in the business of a hotel, motel or boarding house or a similar business;

(d) premises used as a hospital or nursing home or as any other institution providing medical or nursing care;

(e) premises used as a home for aged persons; or

(f) premises used as a boarding school;

"road vehicle" means a vehicle of a kind ordinarily used on roads for the transport of persons or goods;

"State or Territory authority" means:

(a) an instrumentality of a State or Territory; or

(b) an authority or body established for the purpose of a State or Territory by or under a law of the State or Territory;

"transport networks" includes conveyor belts, pipelines and railway lines;

"use", in relation to diesel fuel in relation to a person, does not include the sale or other disposal of the diesel fuel by the person to another person.

(8) For the purposes of determining whether an activity is an agricultural activity, the activity referred to in paragraph (i), (l), (la), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v) or (y) of the definition of **"agriculture"** includes such an activity when it is carried out by a subcontractor of a person contracted to carry out the activity.

(9) For the purposes of determining whether an operation is a mining operation, the operation referred to in paragraph (i), (k), (ka), (l), (m), (n), (o), (p), (q), (r), (u) or (v) of the definition of **"mining operations"** includes such an operation when it is carried out by a subcontractor of a person contracted to carry out the operation.

Diesel fuel rebate—notification of sale etc.

164A. Where a person who has made an application for rebate under subsection 164 (1) in respect of diesel fuel purchased by the person (whether or not the rebate has been paid) sells or otherwise disposes of the fuel, or uses the fuel for a purpose other than the purpose for which he or she purchased the fuel, the person shall, within 21 days after the sale, disposal or use of the fuel, give a Collector particulars in writing of the sale, disposal or use.

Penalty: A fine not exceeding 5 times the amount of the rebate applied for in respect of the fuel of whose sale, other disposal or use particulars were required to be, and were not, given and not less than 2 times that amount.

Diesel fuel rebate—payment of penalty in lieu of prosecution

164AA. (1) Where a person:

(a) knowingly or recklessly obtains rebate referred to in subsection 164 (1) which is not payable; or

(b) in contravention of section 164A, fails to notify a Collector of the sale or other disposal of diesel fuel, or of the use of the fuel for a purpose other than the purpose for which he or she purchased the fuel;

an officer may serve on the person a notice in writing:

(c) where paragraph (a) applies—specifying the amount of rebate that was not payable and demanding:

(i) repayment of that amount; and

(ii) payment of a penalty equal to 3 times that amount;

(d) where paragraph (b) applies—specifying the diesel fuel of whose sale, other disposal or use there has been a failure to notify the Collector and demanding:

(i) repayment of the amount of any rebate that has been paid under subsection 164 (1) in relation to that fuel and that was not payable; and

(ii) payment of a penalty equal to 3 times the amount of rebate applied for in respect of that fuel;

(e) setting out the terms of, or adequate particulars of the provisions of, subsection (2); and

(f) specifying the address at which payment of the amount demanded may be made under subsection (2).

(1A) Where a person, in an application for rebate under section 164:

(a) makes a statement that is false or misleading in a material particular; or

(b) omits from a statement any matter or thing without which the statement is misleading in a material particular;

an officer may serve on the person a notice in writing:

(c) setting out particulars of the false or misleading statement or of the omission by reason of which the statement is misleading;

(d) if any rebate has been paid—demanding repayment of so much of the rebate paid as exceeds the rebate that would have been paid but for the statement or omission;

(e) demanding payment of a penalty of:
  (i) unless subparagraph (ii) or (iii) applies—3 times the amount by which the rebate applied for exceeds the rebate for which application might properly have been made;
  (ii) if 3 times the excess referred to in subparagraph (i) would be less than $100—$100; or
  (iii) if 3 times the excess referred to in subparagraph (i) would be more than $5,000—$5,000;
(f) setting out the terms of subsection (2); and
(g) specifying the address at which payment of the amount demanded may be made under subsection (2).

(2) Where:
(a) a notice is served on a person:
  (i) under subsection (1), in relation to obtaining rebate or failing to notify a Collector of the sale or other disposal of diesel fuel, or of the use of the fuel for a purpose other than the purpose for which he or she purchased the fuel; or
  (ii) under subsection (1A), in relation to the making of a statement or the omission of any matter or thing from a statement; and
(b) the person pays to a Collector, at the address specified in the notice and within 21 days after the day on which the notice was served, the amount or amounts demanded in the notice;

proceedings shall not be brought for an offence against this Act in relation to the obtaining of the rebate, the failure to notify, the making of a statement or the omission from a statement of a matter or thing, as the case requires.

Refunds of export duty

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

Short paid duty etc. may be recovered

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 CEO within twelve months from the date of the short levy or refund.

(2) For the purposes of subsection (1), a drawback of duty shall be deemed to be a refund of duty.

(3) Where a rebate of duty has been paid to a person and the whole or a part of the rebate was not payable to him, he shall repay the whole or that part, as the case may be, of the amount of rebate paid to him on demand being made by the CEO within 12 months from the date on which the rebate was paid.

(4) Where a court or the Administrative Appeals Tribunal determines, or an officer or employee of the Commonwealth performing duties in the Attorney-General's Department (being an officer or employee who is entitled, under section 55D of the *Judiciary Act 1903*, to practise as a barrister and solicitor in any Territory) advises, in writing, that, in particular circumstances, the rebate, or a part of the rebate, paid to a person in respect of diesel fuel used by that person should not have been so paid, the CEO shall not, under subsection (3):

(a) demand repayment of that rebate or that part of that rebate from that person; or

(b) demand repayment of any amount of rebate paid, in similar circumstances, to any other person who, by reason of the operation of that decision, would appear not to have been entitled to that amount;

unless the person referred to in paragraph (a) or (b):

(c) has been convicted of an offence against this Act in respect of the obtaining of that rebate; or

(d) has been required to pay a penalty under subsection 164AA (1) or (1A) in respect of the application for that rebate and has paid that penalty.

Diesel fuel rebate scheme set-offs

165A. (1) Subject to subsection (3), where at any time, a person is liable to repay to the Commonwealth an amount under subsection 164 (2) or 165 (3) in respect of a rebate of duty paid in relation to diesel fuel and, at the same time, the Commonwealth is liable to pay an amount to that person under section 164, the CEO shall, by notice in writing, set off the first-mentioned amount against the second-mentioned amount and, where he or she does so, then, with effect from the day of issue of that notice:

(a) if one amount is greater than the other—the lesser amount shall be taken to have been paid in full and the greater amount shall be taken to have been paid to the extent of the lesser amount; and

(b) if both amounts are equal—both amounts shall be taken to have been paid in full.

(2) Where the CEO effects a set-off by notice under subsection (1), he or she shall give a copy of the notice to the person affected by the set-off.

(3) Where the CEO becomes aware that a person who has been requested to pay an amount under subsection 164 (2) or 165 (3) in respect of a rebate of duty has made application under subsection 273GA (1) for review of that decision requesting payment of that amount:

(a) this section does not permit the set-off of that amount against the amount of the rebate pending the final determination by the Administrative Appeals Tribunal, or by a Court on appeal from the Tribunal, of the review proceedings; and

(b) if it is determined, or ultimately determined, that the amount, or any part of the amount, is not payable, this section thereupon permits the set-off only of the part of the amount, if any, that is payable having regard to the determination of the Tribunal or Court.

No refund if duty altered

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.

Division 4—Disputes as to Duty

Payments under protest

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 (not being duty imposed under the *Customs Tariff (Anti-Dumping) Act 1975*), 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 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.

(3) If a documentary import entry has been made in respect of goods, a protest under this section is taken to have been made if, and only if, the owner of the goods or the agent of the owner:

(a) writes on the entry "Paid under protest"; and

(b) adds to the entry a description of the goods to which the protest relates (where the protest does not relate to all the goods covered by the entry) and a statement of the grounds on which the protest is made; and

(c) signs the statement.

(3A) If a computer import entry has been made by a registered COMPILE user in respect of goods, a protest under this section is taken to have been made if, and only if, the registered COMPILE user transmits to Customs at the time of making payment in respect of those goods following an import entry advice under section 71B:

(a) the entry number; and

(b) the words "Paid under protest"; and

(c) a description of the goods to which the protest relates (where the protest does not relate to all the goods covered by the entry) and a statement of the grounds on which the protest is made.

(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.

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

PART IX—DRAWBACKS

Drawbacks of import duty

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

PART X—THE COASTING TRADE

Goods not to be transferred between certain vessels

175. (1) In this section:

"international flight" and **"international voyage"** have the same respective meanings as they have in Part VII;

"prescribed aircraft" means an aircraft that is not currently engaged in making international flights;

"prescribed flight" in relation to an aircraft, means a flight in the course of which the aircraft takes off from a place outside Australia and lands at a place outside Australia and does not land at a place in Australia;

"prescribed ship" means a ship that is not currently engaged in making international voyages;

"prescribed voyage", in relation to a ship, means a voyage in the course of which the ship travels between places outside Australia and does not call at a place in Australia.

(2) Except with the permission of a Collector or for the purpose of securing the safety of a ship or an aircraft or saving life, the owner or master of a prescribed ship shall not allow any goods to be transferred between the prescribed ship and:

(a) a ship that is engaged in making an international voyage or a prescribed voyage; or

(b) an aircraft that is engaged in making an international flight or a prescribed flight.

Penalty: $25,000.

(3) Except with the permission of a Collector or for the purpose of securing the safety of a ship or an aircraft or saving life, the owner or pilot of a prescribed aircraft shall not allow any goods to be transferred between the prescribed aircraft and:

(a) an aircraft that is engaged in making an international flight or a prescribed flight; or

(b) a ship that is engaged in making an international voyage or a prescribed voyage.

Penalty: $25,000.

(4) A Collector may, when giving permission referred to in subsection (2) or (3) or at any time while the permission is in force, impose conditions in respect of the permission, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts, and may, at any time, revoke, suspend, or vary, or cancel a suspension of, a condition so imposed.

(5) A condition imposed in respect of a permission under subsection (4) or a revocation, suspension, or variation, or a cancellation of a suspension, of such a condition takes effect when a notice, in writing, of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the person to whom the permission has been given or at such later time (if any) as is specified in the notice.

(6) The Collector may revoke a permission given under this section in relation to goods at any time before the goods are transferred.

(7) If, in relation to the transfer of any goods, a person required to comply with a condition imposed in respect of a permission under subsection (4) fails to comply with the condition, he is guilty of an offence against this Act punishable upon conviction by a penalty not exceeding $10,000.

PART XI—AGENTS

Division 1—Preliminary

Interpretation

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 183CJ;

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

"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 customs agent, means another customs agent whose name is endorsed on the agents licence held by the first-mentioned customs agent as a nominee of the first-mentioned 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, other than in subsection 181 (2), 183CC (5), 183CJ (1), 183CQ (4), (5) or (7) or 183CR (3) or in section 183CS, 183D, 183DA, 183DC, 183DD or 183S, to the CEO shall be read as including a reference to a Regional Director for a State or Territory.

Division 2—Rights and liabilities of agents

Authorised agents

181. (1) Subject to subsection (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 CEO, by notice published in the *Gazette*, declares that a place specified in the notice is a place to which this subsection 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 the agent is a corporate customs agent—that agent; or

(b) where the agent is a customs agent—a nominee of that 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 subsection (4) is guilty of an offence punishable upon conviction by a penalty not exceeding $1,000.

Authority to be produced

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.

(2) Where a nominee of a customs agent claims that that 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 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.

Agents personally liable

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.

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

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

Principal liable for agents acting

183A. (1) Where an agent of, or a nominee of a 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 subsection (1) shall not be subject to a penalty of imprisonment.

Division 3—Licensing of customs agents

Interpretation

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 customs agent if:

(a) he has authority as a nominee of, or as an agent, officer or employee of, the 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

183C. **(1)** Subject to this Part, the CEO 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

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;

(ca) where the application is made by a natural person—specify the person or each person (if any) who, if the licence is granted, is to be a nominee of the applicant;

(d) set out the name and address of each person whom the CEO is required to consider for the purposes of subparagraph 183CC (1) (a) (i) or paragraph 183CC (1) (b) or (c);

(e) set out such particulars of the persons and matters that the CEO is required to consider for the purposes of subparagraph 183CC (1) (a) (ii) and section 183CD as will enable him adequately to consider those matters; and

(f) contain such other information as is prescribed.

(2) Where a person makes an application, he shall not propose a person as his nominee at a place unless, at the time the application is made, that person is eligible, or intends to take all necessary action to ensure that, if an agents licence is granted to the applicant, he will be eligible, to be a nominee of the applicant at that place.

(3) A person shall not be proposed under paragraph (1) (c) unless he has consented, in writing, to the proposal.

Reference of application to Committee

183CB. (1) Where the CEO 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.

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

Requirements for grant of licence

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

(a) where the application is made by a natural person:

(i) the applicant is not a person of integrity;

(ii) the applicant is not qualified to be a customs agent; or

(iii) an employee of the applicant who would participate in the work of the applicant if he were a customs agent is not a person of integrity;

(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;

(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

(iii) the company is not a fit and proper company to hold an agents licence; or

(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 subsection (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 subsection (3), he has completed a course of study or instruction approved under subsection (5); and

(b) he has acquired experience that, in the opinion of the CEO, fits him to be a customs agent.

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

(4) The CEO shall, in determining whether a person is a person of integrity for the purposes of subsection (1), have 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.

(4A) The CEO shall, in determining whether a company is a fit and proper company to hold an agents licence for the purposes of subparagraph (1) (b) (iii), have regard to:

(a) any conviction of the company for an offence against this Act committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;

(b) any conviction of the company for an offence under a law of the Commonwealth, of a State or of a Territory that is punishable by a fine of $5,000 or more, being an offence committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;

(c) whether a receiver of the property, or part of the property, of the company has been appointed;

(ca) whether the company is under administration within the meaning of the Corporations Law;

(cb) whether the company has executed under Part 5.3A of that Law a deed of company arrangement that has not yet terminated;

(d) whether the company has been placed under official management; and

(e) whether the company is being wound up.

(5) The CEO 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

183CD. (1) Subject to this section, a person is eligible to be the nominee of a customs agent if, and only if:

(a) he is a natural person;

(b) he is a customs agent;

(c) he does not act as a customs agent in his own right;

(d) where the first-mentioned customs agent is a company—he is a director or an employee of the company;

(e) where the first-mentioned customs agent is a partnership—he is a member or an employee of the partnership;

(f) he is not the nominee of another customs agent;

(g) he is not authorized to be an agent in accordance with subsection 181 (1);

(h) he is a customs agent at a place at which the first-mentioned customs agent is an agent; and

(j) he is not a customs agent at any other place.

(2) A person is not ineligible to be the nominee of 2 or more corporate customs agents, being companies, at a place or places by reason of paragraph (1) (f) or (j) if:

(a) he is a director of each of those companies; and

(b) each of those companies has a nominee at the place, or each place, at which it is a customs agent.

(3) A person is not ineligible to be the nominee of 2 or more corporate customs agents, being partnerships, at a place or places by reason of paragraph (1) (f) or (j) if:

(a) he is a member of each of those partnerships; and

(b) each of those partnerships has, at the place, or each place, at which it is a customs agent, a nominee who is not a partner in it.

(4) A person is not ineligible to be the nominee of a customs agent by reason only of paragraph (1) (j) if:

(a) all the places at which he is a customs agent are places at which the first-mentioned customs agent is an agent; and

(b) the CEO is satisfied that he could attend to the duties of the nominee at all those places in a satisfactory manner.

Original endorsement on licence

183CE. (1) Where the CEO grants an agents licence, he shall:

(a) endorse on the licence the name of the place or of each place at which the holder of the licence may act as a customs agent; and

(b) endorse on the licence the name of each customs agent who is a nominee of the licensee and opposite to each such name the name of the place or of each place at which he acts as a customs agent.

(2) The CEO shall not, in pursuance of subsection (1), endorse a licence so as to show a person as a nominee of a customs agent at a place if that person is not eligible to be a nominee of that customs agent at that place.

Variation of licences

183CF. (1) Subject to subsection (3), the CEO 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 subsection (3), the CEO may, upon application in writing by a 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 customs agent.

(3) The CEO shall not vary the endorsements on a licence so that the licence ceases to comply with subsection 183C (2).

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

Licence granted subject to conditions

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:

(i) a receiver of the property, or part of the property, of the company is appointed; or

(ii) an administrator of the company is appointed under section 436A, 436B or 436C of the Corporations Law; or

(iii) the company executes a deed of company arrangement under Part 5.3A of that Law; or

(iv) the company begins to be wound up;

the holder of the licence shall, within 30 days after the occurrence of the conviction, bankruptcy or event referred to in paragraph (c), as the case requires, give the CEO particulars in writing of the conviction, bankruptcy or event referred to in paragraph (c), 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 customs agent.

(3) An agents licence held by a 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 customs agent commences so to participate;

(b) a nominee of the customs agent dies or ceases to act as nominee of the customs agent;

(c) a person who participates in the work of the 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 CEO particulars in writing of that event, change, conviction or bankruptcy, as the case requires.

(4) An agents licence held by a 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 customs agent are persons of integrity; and

(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 CEO to be necessary or desirable for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts.

(7) The CEO 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 CEO may, by notice in writing served on him, require him to comply with that condition within the time specified in the notice.

Duration of licence

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.

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

Renewal of licence

183CJ. (1) Where a customs agent, within 2 months before the date on which his or her agents licence is due to expire, applies in writing to the CEO, or to a Regional Director for a State or Territory, for the renewal of the licence:

(a) if the application is made to the CEO—the CEO or the Regional Director to whom the CEO refers the application; or

(b) if the application is made to a Regional Director—the CEO or that Regional Director;

shall, by writing, renew the licence unless:

(c) the CEO has given an order under paragraph 183CS (1) (d) in relation to the licence; or

(d) the customs agent is, because of section 183CK, not entitled to hold an agents licence.

(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, subsection (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.

(4) Where the CEO renews a licence under subsection (1), he may, in accordance with subsection 183CG (6), 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

183CK. (1) The CEO 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 CEO, 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 CEO 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 subsection (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 subsection (1), an applicant for an agents licence is not entitled to be granted the licence, the CEO may refuse to grant the licence to the applicant.

(4) Where, by virtue of subsection (1) or (2), a customs agent is not entitled to hold an agents licence, the CEO 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

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

(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 subsection (1) may include an amount calculated with regard to the cost of the establishment, administration and operation of the Committee.

Nominees

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

Removal of nominee

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

(a) the nominee dies;

(b) the nominee ceases to hold an agents licence;

(c) the nominee ceases to act as nominee of the customs agent;

(d) the nominee requests the CEO, 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 customs agent is required under subsection (1), the customs agent shall forthwith deliver the licence to the CEO for the purpose of having the deletion effected.

Notice to nominate new nominee

183CP. If the agents licence of a customs agent ceases to comply with subsection 183C (2), the CEO may, by notice in writing served on the customs agent, require the 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 subsection.

Division 4—Suspension, revocation and non-renewal of licences

Investigation of matters relating to an agents licence

183CQ. (1) The CEO 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 subsection 183CG (8) 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) 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 (1) (d), 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 person who gave the notice intends forthwith to refer to the Committee, for investigation and report to the CEO, the question whether the CEO should take action in relation to the licence under subsection 183CS (1);

(c) the powers that the CEO may exercise in relation to a licence under subsection 183CS (1); 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 CEO, or a Regional Director for a State or Territory, gives notice in accordance with this section to a customs agent, he shall refer the question whether the CEO should take action in relation to the licence under subsection 183CS (1) to the Committee, for investigation and report to the CEO.

(6) Where the CEO refers a question to the Committee under subsection (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 subsection (5), the Committee shall, as soon as practicable, conduct an investigation and make a report on the question to the CEO.

Interim suspension by CEO

183CR. (1) Where the CEO 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.

(2) The CEO may suspend the agents licence of a customs agent in pursuance of subsection (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 subsection; or

(b) giving further notice in writing to the customs agent to the effect that the licence is suspended under that subsection.

(3) A suspension of a licence by the CEO, or by a Regional Director for a State or Territory, under subsection (1) has effect until the suspension is revoked by the CEO, or by a Regional Director for a State or Territory, or the CEO has dealt with the matter in accordance with section 183CS, whichever first occurs.

(4) Where an agents licence is suspended under this section, the CEO may at any time revoke the suspension.

Powers of CEO

183CS. (1) Where the CEO, after considering a report under subsection 183CQ (7) 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 subsection 183CQ (1); or

(b) satisfied on any other grounds that it is necessary to do so for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts;

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 CEO, after considering a report under subsection 183CQ (7) 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 subsection (1) shall:

(a) be in writing; and

(b) be served, either personally or by post, on the holder of the licence.

(4) The period for which the CEO may suspend or further suspend a licence under subsection (1) may be a period expiring after the date on which the licence, if not renewed, would expire.

(5) Where the CEO orders under paragraph (1) (d) that a licence not be renewed, he shall notify the appropriate Collector accordingly.

Effect of suspension

183CT. (1) During a period in which an agents licence held by a natural person is suspended under this Division:

(a) the person shall not act as a customs agent;

(b) the person shall not act as a nominee of a customs agent; and

(c) a nominee of the person shall not act as such a nominee.

(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.

Service of notices

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.

Division 5—National Customs Agents Licensing Advisory Committee

National Customs Agents Licensing Advisory Committee

183D. (1) There is established by this section a Committee by the name of the National Customs Agents Licensing Advisory Committee.

(2) The functions of the Committee are:

(a) to investigate and report on applications referred to it by the CEO, or a Regional Director for a State or Territory, under section 183CB;

(b) to investigate and report on questions referred to it by the CEO, or a Regional Director for a State or Territory, under section 183CQ;

(c) to advise the CEO in relation to the approval of courses of study under section 183CC; and

(d) where the CEO 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 CEO accordingly.

Constitution of Committee

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.

(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 CEO, possesses special knowledge or skill in relation to matters that the Committee is to advise or report on.

(3) A member referred to in paragraph (1) (a) or (b) shall be appointed by the CEO for a period not exceeding 2 years but is eligible for re-appointment.

(4) The member referred to in paragraph (1) (b) shall be appointed on the nomination of an organization that, in the opinion of the CEO, represents customs agents.

(5) The member referred to in paragraph (1) (c) shall be the person for the time being holding, or performing the duties of, the office in the Department that the CEO specifies, in writing signed by him, to be the office for the purposes of this subsection.

(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

183DB. (1) A member referred to in paragraph 183DA (1) (a) or (b) 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 183DA (1) (a) or (b) shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Acting Chairman

183DC. (1) Subject to subsection (2), the CEO 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 subsection 183DA (2), to be appointed as Chairman.

(3) A person appointed to act as Chairman shall be paid such fees, allowances and expenses as the CEO determines.

Deputy member

183DD. (1) The CEO may appoint a person, on the nomination of an organization referred to in subsection 183DA (4), to be the deputy of the member referred to in paragraph 183DA (1) (b) during the pleasure of the CEO and the person so appointed shall, in the event of the absence of the 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.

(2) Where the CEO specifies an office in the Department for the purposes of this subsection, 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 183DA (1) (c) 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 183DA (1) (b) shall be paid such fees, allowances and expenses as the CEO determines.

Procedure of Committees

183E. The regulations may make provision for and in relation to the procedure of the Committee.

Evidence

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.

Proceedings in private

183G. The proceedings of the Committee shall be held in private.

Determination of questions before a Committee

183H. All questions before the Committee shall be decided according to the opinion of the majority of its members.

Customs agent affected by investigations to be given notice

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.

(2) Subject to subsection (3), the Committee shall afford the person on whom a notice has been served in pursuance of subsection (1) an opportunity of examining witnesses, of giving evidence and calling witnesses on his behalf and of addressing the Committee.

(3) Where the person on whom notice has been served in pursuance of subsection (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.

(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

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.

(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.

(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

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 prepaid 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.

Committee may examine upon oath or affirmation

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.

(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.

Offences by witness

183P. A person summoned to attend before the Committee as a witness shall not:

(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.

Statements by witness

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:

(a) an offence against paragraph 183P (b) or (c); or

(b) an offence in connection with the making by him of a statement in an examination before the Committee under section 183N.

Witness fees

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).

(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.

Representation by counsel etc.

183S. (1) In an inquiry before the Committee, the customs agent to whom the inquiry relates and the CEO 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

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 etc.

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

Subdivision A—Preliminary

Definitions

183UA. **(1)** In this Division, unless the contrary intention appears:

"authorised person" means:

(a) in relation to an application for, or for the execution of, a search warrant—an officer of Customs; and

(b) in relation to an application for, or for the execution of, a seizure warrant in respect of goods referred to in paragraph (a) of the definition of "forfeited goods":

(i) an officer of Customs; or

(ii) an officer of police; or

(iii) a member of the Defence Force; and

(c) in relation to an application for, or for the execution of, a seizure warrant in respect of goods referred to in paragraphs (b), (c), (d), (e) and (f) of the definition of "forfeited goods"—an officer of Customs; and

(d) in relation to the exercise of powers under section 203B or 203C:

(i) an officer of Customs; or

(ii) an officer of police; or

(iii) a member of the Defence Force;

"baggage" means goods:

(a) that are carried by or for a traveller, including the captain and crew members, on board the same ship or aircraft as the traveller; or

(b) that a traveller intended to be so carried;

"container" includes:

(a) a trailer or other like receptacle, whether with or without wheels, that is used for the movement of goods from one place to another; and

(b) any baggage that is or could be used for the enclosure of other baggage;

"conveyance" means an aircraft, railway rolling stock, vehicle or vessel of any kind;

"Customs place" means:

(a) a port, airport or wharf that is appointed, and the limits of which are fixed, under section 15; or

(b) a place that is the subject of a permission under subsection 58 (2); or

(c) a boarding station that is appointed under section 15; or

(d) a place that is appointed under paragraph 17 (b); or

(e) a place described in a licence for warehousing goods that is granted under subsection 79 (1); or

(f) a place that is approved, in writing, by the CEO as a place for the examination of international mail;

Note: Subsection (2) provides for parliamentary disallowance of an instrument approving a place under paragraph (f) of the definition.

"evidential material", in relation to an offence, whether the offence is indictable or summary, means a thing relevant to the offence, including such a thing in electronic form;

"executing officer", in relation to a search warrant or to a seizure warrant, means:

(a) an authorised person named in the warrant by the judicial officer issuing it as being responsible for executing the warrant; or

(b) if that authorised person does not intend to be present at the execution of the warrant—any authorised person whose name has been written in the warrant by the authorised person so named; or

(c) another authorised person whose name has been written in the warrant by the authorised person last named in the warrant;

"forfeited goods" means goods described as forfeited to the Crown under:

(a) section 228, 228A, 228B, 229, 229A or 230 of this Act; or

(b) section 26 of the *Coal Excise Act 1949*; or

(c) section 7, 10, 11 or 13 of the *Commerce (Trade Descriptions) Act 1905*; or

(d) section 73 of the *Distillation Act 1901*; or

(e) section 116 of the *Excise Act 1901*; or

(f) section 17 of the *Spirits Act 1906*;

"frisk search" means:

(a) a search of a person conducted by quickly running the hands over the person's outer garments; and

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person;

"judicial officer", in relation to a search warrant or to a seizure warrant, means:

(a) a magistrate; or

(b) a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants;

"magistrate" means a magistrate who is remunerated by salary or otherwise;

"occupier", in relation to premises that are a conveyance or a container, means the person having charge of the conveyance or container;

"offence" means an offence against:

(a) this Act; or

(b) the *Coal Excise Act 1949*; or

(c) the *Commerce (Trade Descriptions) Act 1905*; or

(d) the *Distillation Act 1901*; or

(e) the *Excise Act 1901*; or

(f) the *Spirits Act 1906*;

"ordinary search" means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and

(b) an examination of those items;

"person assisting", in relation to a search warrant or to a seizure warrant, means:

(a) a person who is an authorised person and who is assisting in the execution of the warrant; or

(b) a person who is not an authorised person and who has been authorised by the CEO or by a Regional Director for a State or Territory to assist in executing the warrant;

"premises" includes a place, a conveyance or a container;

"search warrant" means a warrant issued under section 198;

"seizure notice" means a notice of the kind referred to in section 205A;

"seizure warrant" means a warrant issued under section 203;

"special forfeited goods" means forfeited goods that are referred to in paragraph 229 (1) (b) or (n);

"warrant premises" means premises in relation to which a search warrant or a seizure warrant is in force.

(2) An instrument of approval of a place as a place for the examination of international mail is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*..

Law relating to legal professional privilege not affected

183UB. This Division does not affect the law relating to legal professional privilege.

CEO may give directions concerning the exercise of powers under this Division

183UC. (1) Without limiting the generality of the power conferred on the CEO under subsection 4 (4) of the *Customs Administration Act 1985*, the CEO may give directions in writing under that subsection concerning:

(a) the circumstances in which the powers in this Division may be exercised; and

(b) the officers of Customs who are entitled to exercise those powers; and

(c) the manner and frequency of reporting to the CEO concerning the exercise of those powers.

(2) A direction given for the purposes of subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Subdivision B—General regulatory powers

Power to pursue ships and aircraft

184. (1) Where the master of a ship refuses or fails to comply with a request under subsection 59 (1) or (2) to permit the ship to be boarded, 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 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 subsection 59 (4) 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.

Search etc. of ships and aircraft near Australia

185. (1) This section applies in relation to, and only in relation to, a ship the master of which has been requested to permit the ship to be boarded pursuant to subsection 59 (1) or (2) or an aircraft that has been landed for boarding following a request under subsection 59 (4).

(2) An officer may:

(a) board and search the ship or aircraft;

(b) search any goods found on the ship or aircraft;

(ba) secure 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 under section 59 was made 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.

Examine all goods

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.

Power to board and search

187. An officer may:

(a) board any ship or aircraft;

(b) board any Australian resources installation:

(i) that is subject to the control of the Customs;

(ii) at which there is a ship or aircraft that has come to the installation from a place outside Australia; or

(iii) on which an officer has reasonable grounds to believe there are goods that are subject to the control of the Customs;

(c) board a resources installation (other than an Australian resources installation) in respect of which permission under section 5A has been granted;

(d) board any Australian sea installation:

(i) that is subject to the control of Customs;

(ii) at which there is a ship or aircraft that has come to the installation from parts beyond the seas; or

(iii) on which an officer has reasonable grounds to believe there are goods that are subject to the control of the Customs;

(e) board a sea installation (other than an Australian sea installation) in respect of which permission under section 5B has been granted;

(f) search any ship or aircraft or an installation of the kind referred to in paragraph (b), (c), (d) or (e); or

(g) secure any goods on any ship or aircraft or on any installation of the kind referred to in paragraph (b), (c), (d) or (e).

Boarding

188. The power of an officer to board shall extend to staying on board any ship, aircraft or installation and the Collector may station an officer on board any ship, aircraft or installation, and the master or pilot shall provide sleeping accommodation in the cabin and suitable and sufficient food for such officer.

Penalty: $500.

Searching

189. The power of an officer to search shall extend to every part of any ship, aircraft or installation, and shall authorize the opening of any package, locker, or place and the examination of all goods.

Securing goods

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.

Seals etc. not to be broken

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, aircraft or installation 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.

Penalty: $5,000.

Seals etc. on ship or aircraft in port bound to another port within Commonwealth

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: $5,000.

Officers may patrol coasts etc.

193. Any officer and any person 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 bay harbour lake or river.

Ships on service may be moored in any place

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 etc.

195. **(1)** An officer of Customs may question:

(a) any person who is on board a ship or an aircraft or an installation of the kind referred to in paragraph 187 (b), (c), (d) or (e);

(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; or

(f) prohibited goods.

(2) A person shall answer questions put to him in pursuance of subsection (1).

Penalty: $1,000.

Power to question persons claiming packages

196C. **(1)** Before an officer of Customs decides whether or not to authorise the delivery into home consumption of goods referred to in subsection 71 (1), the officer may:

(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 subsection (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 subsection (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 subsection (2).

(4) In this section, **"owner"**, in relation to goods, means a person who has an interest in the goods.

Power to stop conveyances about to leave a Customs place

197. (1) If a conveyance is about to leave a Customs place, an officer of Customs may:

(a) require the conveyance to stop; and

(b) check to establish that there is appropriate documentation authorising the movement from the Customs place of any goods in or on the conveyance that are subject to the control of Customs within the meaning of section 30.

(2) For the purposes of subsection (1), an officer of Customs may question the person apparently in charge of the conveyance about any goods in, on, or in a container on, the conveyance.

(3) The power in paragraph (1) (b) includes a power to give directions relating to:

(a) the unloading of any goods from the conveyance; or

(b) their movement to a particular part of the Customs place for further examination.

(4) If a direction under subsection (3) is not complied with, an officer of Customs may do what is necessary to give effect to the direction or to arrange for it to be done.

(5) An officer of Customs must not detain a conveyance under this section for longer than is necessary and reasonable to exercise the powers conferred by this section.

Subdivision C—Search warrants in respect of things believed to be evidential material

When search warrants can be issued

198. (1) A judicial officer may issue a warrant to search premises if the judicial officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or within the next 72 hours there will be, any evidential material, other than evidential material that is also a forfeited good, on or in the premises.

(2) If:

(a) the person applying for the warrant has, at any time previously, applied for a warrant relating to the search of, or the seizure of goods that are on or in, the same premises; and

(b) the premises are not a Customs place;

the person must state particulars of those applications and their outcome in the information.

(3) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:

(a) the offence to which the warrant relates; and

(b) a description of the premises to which the warrant relates; and

(c) the kind of evidential material that is to be searched for under the warrant; and

(d) the name of the authorised person who, unless he or she inserts the name of another authorised person in the warrant, is to be responsible for executing the warrant; and

(e) the period for which the warrant remains in force, which must not be more than 7 days; and

(f) whether the warrant may be executed at any time or only during particular hours.

(4) The judicial officer is also to state in the warrant:

(a) that it authorises the seizure of things (other than evidential material of the kind referred to in paragraph (3) (c)) found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds:

(i) to be evidential material in relation to an offence to which the warrant relates or to another offence; and

(ii) not to be forfeited goods;

if the executing officer or person assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and

(b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has any evidential material in his or her possession.

(5) Paragraph (3) (e) does not prevent the issue of successive warrants in relation to the same premises.

(6) If the application for the warrant is made under section 203M, this section applies as if:

(a) subsection (1) referred to 48 hours rather than 72 hours; and

(b) paragraph (3) (e) referred to 48 hours rather than 7 days.

(7) A judicial officer of a particular State or Territory may issue a warrant in respect of the search of premises in another State or Territory.

(8) This section is not to be taken to limit any power of search granted to an officer of Customs under any other provision of a law of Customs or Excise within the meaning of the *Customs Administration Act 1985*.

The things that are authorised by a search warrant

199. (1) A search warrant that is in force in relation to premises authorises the executing officer or a person assisting:

(a) to enter the warrant premises; and

(b) to search for and to record fingerprints found on or in the premises, and take samples of things (other than human biological fluid or tissue) found on or in the premises for forensic purposes; and

(c) to search the premises for the kind of evidential material specified in the warrant, and to seize things of that kind found on or in the premises; and

(d) to seize other things found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds:

(i) to be evidential material in relation to an offence to which the warrant relates or to another offence; and

(ii) not to be forfeited goods;

if the executing officer or person assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and

(e) if the warrant so allows:

(i) to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any evidential material in his or her possession; and

(ii) to seize any such material found in the course of the search.

(2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.

(3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:

(a) permits entry of the conveyance, wherever it is; and

(b) extends to every container on the conveyance.

(4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.

(5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

(6) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

Use of equipment to examine or process things

200. (1) The executing officer or a person assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found on or in the premises in order to determine whether they are things that may be seized under the warrant.

(2) If:

(a) it is not practicable to examine or process the things on or in the warrant premises; or

(b) the occupier of the premises consents in writing;

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.

(3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:

(a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and

(b) allow the occupier or his or her representative to be present during the examination or processing.

(4) The executing officer or a person assisting may operate equipment already on or in the warrant premises to carry out the examination or processing of a thing found on or in the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or person assisting believes on reasonable grounds that:

(a) the equipment is suitable for the examination or processing; and

(b) the examination or processing can be carried out without damage to the equipment or the thing.

Use of electronic equipment on or in premises

201. (1) The executing officer or a person assisting may operate electronic equipment on or in the premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

(2) If the executing officer or a person assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can, by using facilities on or in the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or

(c) if the material can be transferred to a disk, tape or other storage device that:

(i) is brought to the premises; or

(ii) is on or in the premises and the use of which for that purpose has been agreed to in writing by the occupier of the premises;

operate the equipment to copy the material to the storage device and take the storage device from the premises.

(3) The executing officer or a person assisting may seize equipment under paragraph (2) (a) only if it is not practicable to put the material in documentary form as mentioned in paragraph (2) (b) or to copy the material as mentioned in paragraph (2) (c).

(4) If the executing officer or a person assisting believes on reasonable grounds that:

(a) evidential material may be accessible by operating electronic equipment on or in the premises; and

(b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

(5) The executing officer or a person assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

(6) The equipment may be secured:

(a) for a period not exceeding 24 hours; or

(b) until the equipment has been operated by the expert;

whichever first occurs.

(7) If the executing officer or a person assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a judicial officer for an extension of that period.

(8) The executing officer or a person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

(9) The provisions of this Subdivision relating to the issue of warrants apply, with such modifications as are necessary, to the issuing of an extension.

Compensation for damage to equipment or data

202. (1) If:

(a) damage is caused to equipment as a result of it being operated as mentioned in section 200 or 201; or

(b) the data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;

and the damage or corruption was caused as a result of:

(c) insufficient care being exercised in selecting the person who was to operate the equipment; or

(d) insufficient care being exercised by the person operating the equipment;

compensation for the damage or corruption is payable to the owner of the equipment or the user of the data or programs concerned.

(2) For the purposes of subsection (1), damage to data includes damage by erasure of data or addition of other data.

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

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

Copies of seized things to be provided

202A. (1) Subject to subsection (2), if the executing officer or a person assisting seizes, under a warrant relating to premises:

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device, the information in which can be readily copied;

the executing officer or person assisting must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the document, film, computer file, thing or information to that person as soon as practicable after the seizure.

(2) Subsection (1) does not apply if:

(a) the thing that has been seized was seized under paragraph 201 (2) (b) or (c); or

(b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

Subdivision D—Seizure of goods believed to be forfeited goods

When seizure warrants can be issued

203. (1) A judicial officer may issue a warrant to seize goods on or in particular premises if the judicial officer is satisfied by information on oath that an authorised person:

(a) has reasonable grounds for suspecting that the goods:

(i) are forfeited goods; and

(ii) are, or within the next 72 hours will be, on or in the premises; and

(b) has demonstrated the necessity, in all the circumstances, for seizure of the goods.

(2) Subsection (1) does not apply to the seizure of goods under section 203B or 203C.

(3) In considering whether the authorised person has demonstrated the necessity, in all the circumstances, for seizure of the goods, the judicial officer may have regard to, but is not limited to, consideration of the following factors:

(a) the seriousness or otherwise of any offence by reason of the commission of which the goods are believed to be forfeited goods;

(b) the circumstances in which any such offence is believed to have been committed;

(c) the pecuniary or other penalty that might be imposed for any such offence;

(d) the nature, quality, quantity and estimated value of the goods;

(e) whether administrative penalties might be imposed in respect of the goods;

(f) the inconvenience or cost to any person having a legal or equitable interest in the goods if they were seized.

(4) If:

(a) the person applying for the warrant has, at any time previously, applied for a warrant relating to the search of, or seizure of goods that are on or in, the same premises; and

(b) the premises are not a Customs place;

the person must state particulars of those applications and their outcome in the information.

(5) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:

(a) a description of the goods to which the warrant relates; and

(b) a description of the premises on or in which the goods are believed to be located; and

(c) the name of the authorised person who, unless that authorised person inserts the name of another authorised person in the warrant, is to be responsible for executing the warrant; and

(d) the period for which the warrant remains in force, which must not be more than 7 days; and

(e) whether the warrant may be executed at any time or only during particular hours.

(6) The judicial officer is also to state in the warrant:

(a) that it authorises the seizure of goods (other than forfeited goods of the kind referred to in paragraph (5) (a)) found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods; and

(b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has any forfeited goods of the kind referred to in paragraph (5) (a) or any special forfeited goods in his or her possession.

(7) Paragraph (5) (d) does not prevent the issue of successive warrants in relation to the same premises.

(8) If the application for the warrant is made under section 203M, this section applies as if:

(a) subsection (1) referred to 48 hours rather than 72 hours; and

(b) paragraph (5) (d) referred to 48 hours rather than 7 days.

(9) A judicial officer of a particular State or Territory may issue a warrant in respect of the seizure of goods on or in premises in another State or Territory.

The things that are authorised by seizure warrants

203A. (1) A seizure warrant that is in force in relation to premises authorises the executing officer or a person assisting:

(a) to enter the warrant premises; and

(b) to search for the goods described in the warrant; and

(c) to seize the goods described in the warrant; and

(d) to seize other goods:

(i) that are found on or in the premises in the course of searching for the goods the subject of the warrant; and

(ii) that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods; and

(e) if the warrant so allows:

(i) to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any goods that are goods the subject of the warrant or special forfeited goods in his or her possession; and

(ii) to seize any such goods found in the course of that search.

(2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.

(3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:

(a) permits entry of the conveyance, wherever it is; and

(b) extends to every container on the conveyance.

(4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.

(5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

(6) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

Seizure without warrant of special forfeited goods, or of evidential material relating to special forfeited goods, at a Customs place

203B. (1) This section applies if an authorised person suspects on reasonable grounds that there are special forfeited goods:

(a) at, or in a container at, a Customs place; or

(b) in, on, or in a container on, a conveyance at a Customs place.

Note: Container has a special definition for the purposes only of this Division.

(2) The authorised person may, without warrant:

(a) search the Customs place, or the container at that place, for the special forfeited goods; or

(b) stop and detain at the Customs place the conveyance and search it and any container on it for the special forfeited goods;

as the case requires, and seize the goods if the authorised person finds them there.

(3) If, in the course of searching for special forfeited goods, an authorised person finds a thing that the authorised person believes on reasonable grounds is evidential material relating to an offence committed in respect of those special forfeited goods, the authorised person may, without warrant, seize that thing whether or not the authorised person has found any such special forfeited goods.

(4) For the purposes of the search, the authorised person may question any person apparently in charge of the place, conveyance or container about any goods or thing at the place, in or on the conveyance, or in the container.

(5) The authorised person must exercise his or her powers subject to section 203D.

Seizure without warrant of narcotic goods or of evidential material relating to narcotic goods at other places

203C. (1) This section applies if:

(a) an authorised person suspects on reasonable grounds that there are special forfeited goods that are narcotic goods:

(i) at, or in a container at, a place other than a Customs place; or

(ii) in, on, or in a container on, a conveyance at a place other than a Customs place; and

(b) it is necessary to exercise a power under this section in order to prevent such goods from being concealed, lost or destroyed.

Note: Container has a special definition for the purposes only of this Division.

(2) The authorised person, without warrant:

(a) search the place or any container at the place for the narcotic goods; or

(b) stop and detain the conveyance about to leave the place, and search it and any container on it for the narcotic goods;

as the case requires, and seize the goods if the authorised person finds them there.

(3) If, in the course of searching for special forfeited goods that are narcotic goods, an authorised person finds a thing that the authorised person believes on reasonable grounds is evidential material relating to an offence committed in respect of those goods, the authorised person may, without warrant, seize that thing whether or not the authorised person has found those goods.

(4) For the purposes of the search, the authorised person may question any person apparently in charge of the place, conveyance or container about any goods or thing at the place, in or on the conveyance, or in the container.

(5) The authorised person must exercise his or her powers subject to section 203D.

How an authorised person is to exercise a power under section 203B or 203C

203D. (1) An authorised person who exercises a power under section 203B or 203C in relation to a conveyance must not detain the conveyance for longer than is necessary and reasonable to search it and any container found on it.

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

(a) the person (if any) apparently in charge of the place, conveyance or container has been given a reasonable opportunity to facilitate the search by providing access to or by opening the conveyance or container; or

(b) it is not possible to give that person such an opportunity.

Subdivision E—Provisions applicable both to search and seizure warrants

Conduct of ordinary searches and frisk searches

203E. An ordinary search or a frisk search of a person under this Division must, if practicable, be conducted by a person of the same sex as the person being searched.

Announcement before entry

203F. (1) The executing officer must, before any person enters premises under a search warrant or a seizure warrant:

(a) announce that he or she is authorised to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

(2) The executing officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:

(a) the safety of a person (including the executing officer); or

(b) that the effective execution of the warrant is not frustrated.

Details of warrant to be given to occupier

203G. (1) If a search warrant or a seizure warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the place where the warrant is executed, the executing officer or a person assisting must make available to that person a copy of the warrant.

(2) If a person is searched under a warrant in relation to premises, the executing officer or a person assisting must show the person a copy of the warrant.

(3) The executing officer must identify himself or herself to the person at the place where the warrant is executed.

(4) At the time of executing the warrant, the executing officer or a person assisting:

(a) is not required to have in his or her possession or under his or her immediate control the original warrant; but

(b) must have in his or her possession or under his or her immediate control a copy of the warrant.

(5) In this section:

"a copy of the warrant" means:

(a) in relation to a warrant issued under section 198 or 203—a copy that includes the signature of the judicial officer who issued the warrant and the seal of the relevant court; and

(b) in relation to a warrant issued under section 203M—a completed form of warrant that includes the name of the judicial officer who issued the warrant.

Occupier entitled to be present during search or seizure

203H. (1) If a search warrant or a seizure warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the place where the warrant is executed, the person is, subject to Part 1C of the *Crimes Act 1914*, entitled to observe the search or seizure being conducted.

(2) The right to observe the search or seizure being conducted ceases if the person impedes the search or seizure.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Availability of assistance and use of force in executing a warrant

203J. In executing a search warrant or a seizure warrant:

(a) the executing officer may obtain such assistance; and

(b) the executing officer, or a person who is an authorised person and who is assisting in executing the warrant, may use such force against persons and things;

as is necessary and reasonable in the circumstances.

Specific powers available to executing officers

203K. (1) In executing a search warrant or a seizure warrant in relation to premises, the executing officer or a person assisting may:

(a) for a purpose incidental to the execution of the warrant; or

(b) if the occupier of the premises consents in writing;

take photographs or video recordings of the premises or of things on or in the premises.

(2) If a search warrant or a seizure warrant in relation to premises is being executed, the executing officer and the persons assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises:

(a) for not more than one hour; or

(b) for a longer period if the occupier of the premises consents in writing.

(3) If:

(a) the execution of a search warrant or of a seizure warrant is stopped by an order of a court; and

(b) the order is later revoked or reversed on appeal; and

(c) the warrant is still in force;

the execution of the warrant may be completed.

(4) If:

(a) the execution of a search warrant or of a seizure warrant is stopped by an order of a court; and

(b) the order is later revoked or reversed on appeal; and

(c) the warrant has ceased to be in force;

the court revoking or reversing the order may reissue the warrant for a further period not exceeding 7 days.

(5) The court must not exercise the power under subsection (4) unless it is satisfied of the matters set out in subsection 198 (1) or 203 (1).

Use of animals in executing a warrant

203L. In executing a search warrant or a seizure warrant in relation to premises, the executing officer or a person assisting may bring to the premises any animals reasonably necessary for locating things the subject of the warrant.

Warrants by telephone or other electronic means

203M. (1) An authorised person may apply to a judicial officer for a search warrant or for a seizure warrant by telephone, telex, facsimile or other electronic means:

(a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The judicial officer may require communication by voice to the extent that is practicable in the circumstances.

(3) An application under this section must include all information required to be provided in an ordinary application for a search warrant or for a seizure warrant, but the application may, if necessary, be made before the information is sworn.

(4) If an application is made to a judicial officer under this section and the judicial officer, after considering the information and having received and considered such further information (if any) as the judicial officer required, is satisfied that:

(a) a search warrant or a seizure warrant in the terms of the application should be issued urgently; or

(b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;

the judicial officer may complete and sign the same form of warrant that would be issued under section 198 or 203.

(5) If the judicial officer decides to issue the warrant, the judicial officer is to inform the applicant, by telephone, telex, facsimile or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

(6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the judicial officer, stating on the form the name of the judicial officer and the day on which and the time at which the warrant was signed.

(7) The applicant must, not later than the day after:

(a) the day of expiry of the warrant; or

(b) the day on which the warrant was executed;

whichever is the earlier, give or transmit to the judicial officer the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.

(8) The judicial officer must:

(a) attach to the documents provided under subsection (7) the form of warrant signed by the judicial officer; and

(b) give or transmit to the applicant the attached documents.

(9) If:

(a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and

(b) the form of warrant signed by the judicial officer is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

Receipts for things seized under warrant

203N. (1) If a thing is seized under a search warrant or a seizure warrant, the executing officer or a person assisting must provide a receipt for the thing.

(2) If 2 or more things are seized, they may be covered in the one receipt.

Offence for making false statements in warrants

203P. A person must not make, in an application for a search warrant or for a seizure warrant, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

Offences relating to telephone warrants

203Q. A person must not:

(a) state in a document that purports to be a form of warrant under section 203M the name of a judicial officer unless that judicial officer issued the warrant; or

(b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the judicial officer; or

(c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows:

(i) has not been approved by a judicial officer under that section; or

(ii) departs in a material particular from the terms authorised by a judicial officer under that section; or

(d) give to a judicial officer a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

Subdivision F—Dealing with things seized as evidential material under a search warrant or under subsection 203B (3) or 203C (3)

Retention of things seized under a search warrant or under subsection 203B (3) or 203C (3)

203R. (1) Subject to any law of the Commonwealth, a State or a Territory permitting the retention, destruction or disposal of a thing seized as evidential material by an officer of Customs under a search warrant or by an authorised person under subsection 203B (3) or 203C (3), the officer or authorised person must return it if:

(a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or

(b) 60 days after its seizure:

(i) proceedings in respect of which the thing may afford evidence have not been started; and

(ii) an order permitting the thing to be retained has not been made under section 203S; and

(iii) an order of a court of the Commonwealth or of a State or Territory permitting the retention, destruction or disposal of the thing has not been made;

whichever first occurs.

(2) For the purposes of this section, the return of a thing requires its return to the person reasonably believed to be the owner of the thing in a condition as near as practicable to the condition in which it was seized.

Magistrate may permit a thing seized under a search warrant or under subsection 203B(3) or 203C(3) to be retained

203S. (1) If a thing is seized as evidential material by an officer of Customs under a search warrant, or by an authorised person under subsection 203B (3) or 203C (3), and:

(a) before the end of 60 days after the seizure; or

(b) before the end of a period previously specified in a magistrate's order under this section;

proceedings in respect of which the thing may afford evidence have not been started:

(c) if the thing is seized by an officer of Customs under a search warrant—an officer of Customs may apply to a magistrate for an order that the thing be retained; or

(d) if the thing is seized by an authorised person under subsection 203B (3) or 203C (3)—an authorised person may apply to a magistrate for an order that the thing be retained.

(2) If the magistrate is satisfied:

(a) that it is necessary for the retention of the thing be continued:

(i) for the purposes of an investigation as to whether an offence has been committed; or

(ii) to enable evidence of an offence to be assembled for the purposes of a prosecution; and

(b) that there has been no avoidable delay in conducting the investigation or assembling the evidence concerned;

the magistrate may order that the thing be retained for a period specified in the order.

(3) Before making the application, the officer of Customs or the authorised person must:

(a) take reasonable steps to discover who has an interest in the retention of the thing; and

(b) if it is practicable to do so, notify each person who the officer believes to have such an interest of the proposed application.

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

Seizure of protected objects

203T. (1) In this section:

"inspector" has the same meaning as in the Act;

"Minister" means the Minister administering the Act;

"the Act" means the *Protection of Movable Cultural Heritage Act 1986*.

(2) Where:

(a) the Minister is of the opinion that a particular object may become forfeited by virtue of section 9 of the Act; or

(b) a foreign country has requested the return of a particular object exported from that country and the Minister is of the opinion that the object may become liable to forfeiture by virtue of section 14 of the Act;

the Minister may issue a notice in writing to the Comptroller to that effect.

(3) An officer may seize a protected object or any object that the officer believes on reasonable grounds is a protected object, being an object that is subject to the control of the Customs.

(4) Where an officer seizes an object under subsection (3), the officer shall forthwith deliver the object into the custody of an inspector.

Seized goods to be secured

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 goods of that kind.

(2) If an officer of Customs seizes any goods other than narcotic-related goods under a seizure warrant or under section 203B, the officer must, as soon as practicable, take those goods to an approved place.

(3) If a person other than an officer of Customs seizes any goods other than narcotic-related goods under a seizure warrant or under section 203B, the person must, as soon as practicable, deliver the goods into the custody of an officer of Customs.

(4) If a person other than a member of the Australian Federal Police seizes:

(a) any narcotic-related goods under a seizure warrant or under section 203B; or

(b) any narcotic goods under section 203C;

the person must, as soon as practicable, deliver the goods into the custody of a member of the Australian Federal Police.

(5) If goods are delivered to an officer of Customs under subsection (3), the officer must:

(a) if paragraph (b) does not apply—as soon as practicable, deliver the goods to an approved place; or

(b) if the goods are delivered to the officer at an approved place—leave the goods at that place.

Requirement to serve seizure notices

205. (1) After goods have been seized under a seizure warrant or under subsection 203B (2) or 203C (2), the responsible person must serve, within 7 days after the seizure, a seizure notice on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized.

(2) Subsection (1) applies whether or not a claim for the return of the goods seized has been made under section 205B.

(3) The notice must be in writing and must be served:

(a) personally or by post; or

(b) if no person of the kind referred to in subsection (1) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.

(4) A seizure notice may be served on a person who is outside Australia.

(5) In this section:

"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 subsection 204 (3); 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 subsection 204 (4).

Matters to be dealt with in seizure notices

205A. A seizure notice must set out the following:

(a) a statement identifying the goods;

(b) the day on which they were seized;

(c) the ground, or each of the grounds, on which they were seized;

(d) a statement that, if a claim for the return of the goods has not already been made, and is not made within 30 days after the day the notice is served, the goods will be taken to be condemned as forfeited to the Crown;

(e) if the notice is to be served in a foreign country—a statement that the person served, if that person has not yet made such a claim, may not make such a claim unless he or she has first appointed in writing an agent in Australia with authority to accept service of documents, including process in any proceedings arising out of the matter.

Claim for return of goods seized

205B. (1) If goods are seized under a seizure warrant or under subsection 203B (2) or 203C (2), the owner of the goods may, whether or not a seizure notice has yet been served on the owner, make a claim to the appropriate person for the return of the goods.

(2) A claim:

(a) must be in writing in an approved form; and

(b) must specify the grounds on which the claim is made; and

(c) if it is made by a person who does not reside or have a place of business in Australia, must:

(i) appoint an agent in Australia with authority to accept service of documents, including process in any proceedings, arising out of the matter; and

(ii) specify the address of the agent for service; and

(iii) be accompanied by the written consent of the agent signed by the agent, agreeing to act as agent.

(3) In this section:

"appropriate person" means:

(a) in relation to goods other than narcotic-related goods:

(i) the CEO; or

(ii) a Regional Director for a State or Territory; and

(b) in relation to narcotic-related goods:

(i) the Commissioner of Police; or

(ii) a Deputy Commissioner of Police.

Treatment of goods seized if no claim for return is made

205C. If:

(a) goods have been seized under a seizure warrant or under subsection 203B (2) or 203C (2); and

(b) a seizure notice has been served; and

(c) at the end of 30 days after the day the notice was served, no claim has been made for return of the goods;

the goods are taken to be condemned as forfeited to the Crown.

Treatment of goods seized if a claim for return is made

205D. (1) This section applies if:

(a) goods are seized under a seizure warrant or under subsection 203B (2) or 203C (2); and

(b) not later than 30 days after the day the seizure notice was served, a claim is made under section 205B for return of the goods.

(2) The authorised person who seized the goods must, subject to any law of the Commonwealth, a State or a Territory permitting their retention, destruction or disposal, return the goods unless:

(a) the goods have been dealt with under section 206 or 207; or

(b) not later than 60 days after the claim for their return is made, proceedings in respect of an offence involving the goods have been commenced and, on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or

(c) not later than 60 days after the claim for their return is made:

(i) an order permitting the goods to be retained for a specified period has been made under section 205E; and

(ii) before the end of that specified period, proceedings in respect of an offence involving the goods have been commenced and, on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or

(d) not later than 60 days after the claim for their return is made:

(i) an order permitting the goods to be retained for a specified period has been made under section 205E; and

(ii) before the end of that specified period proceedings have been commenced before a court of summary jurisdiction for a declaration that the goods are special forfeited goods and, on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or

(e) if the goods were seized as special forfeited goods—not later than 60 days after the claim for their return is made, proceedings before a court of summary jurisdiction for a declaration that the goods are special forfeited goods have been commenced and, on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(3) If:

(a) goods seized otherwise than as special forfeited goods have not been dealt with under section 206; and

(b) proceedings of the kind referred to in paragraph (2) (b) or (c) are commenced in respect of an offence involving the goods; and

(c) on completion of the proceedings, the court:

(i) finds that the offence is proved; and

(ii) is satisfied, in all the circumstances of the case, that it is appropriate that an order be made for condemnation of the goods as forfeited to the Crown;

the court must make an order to that effect.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(4) If:

(a) goods seized as special forfeited goods have not been dealt with under section 206 or 207; and

(b) proceedings of the kind referred to in paragraph (2) (b) or (c) are commenced in respect of an offence involving the goods; and

(c) on completion of the proceedings, the court is satisfied that the goods are special forfeited goods;

the court must make an order for condemnation of the goods as forfeited to the Crown, whether or not the court finds the offence proved.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(5) Subject to subsection (6) if:

(a) goods seized as special forfeited goods have not been dealt with under section 206 or 207; and

(b) proceedings of the kind referred to in paragraph (2) (d) or (e) are commenced in respect of the goods; and

(c) on completion of the proceedings, the court is satisfied that the goods are special forfeited goods;

the court must declare the goods to be special forfeited goods and make an order for condemnation of the goods as forfeited to the Crown.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(6) A court must not make an order for condemnation of goods under subsection (5) if proceedings for an offence involving the goods have been commenced.

(7) If the finding of a court in proceedings under paragraph (2) (b), (c), (d) or (e) in respect of goods that have not been dealt with under section 206 or 207 may be taken on appeal to another court, the goods are not to be returned under subsection (2), or disposed of under section 208D or 208DA, while that appeal may be made, or, if it is made, until the completion of that appeal.

(8) For the purposes of this section, the return of goods requires their return to the person reasonably believed to be the owner of the goods in a condition as near as practicable to the condition in which they were seized.

(9) In this section:

"offence" means an offence against any law of the Commonwealth, a State or a Territory;

"special forfeited goods" includes:

(a) goods that are forfeited under section 7, 10, 11 or 13 of the *Commerce (Trade Descriptions) Act 1905*; and

(b) goods that are forfeited under a paragraph of section 73 of the *Distillation Act 1901* other than paragraph 73 (iv); and

(c) goods that are forfeited under section 17 of the *Spirits Act 1906*.

(10) In this section, a reference to completion of proceedings includes a reference to completion of any appeal process arising from those proceedings.

Magistrate may permit goods seized under a seizure warrant or under subsection 203B (2) or 203C (2) to be retained

205E. (1) If goods are seized under a seizure warrant or under subsection 203B (2) or 203C (2) and:

(a) before the end of 60 days after the making of a claim for their return; or

(b) before the end of the period previously specified in a magistrate's order under this section;

proceedings of the kind referred to in paragraph 205D (2) (b) have not been started, an authorised person may apply to a magistrate for an order that the goods be retained.

(2) If the magistrate is satisfied that it is necessary:

(a) that the retention of the goods continue while evidence of the offence to which the proceedings referred to in paragraph 205D (2) (b) relate is assembled; and

(b) that there has been no avoidable delay in assembling that evidence;

the magistrate may order that the goods be retained for a period specified in the order.

(3) Before making the application, the authorised person must:

(a) take reasonable steps to discover who has an interest in the retention of the goods; and

(b) if it is practicable to do so, notify each person who the officer believes to have such an interest of the proposed application.

Right of compensation in certain circumstances for goods disposed of or destroyed

205F. (1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown because no claim for their return was made, a person may apply to a court of competent jurisdiction under this section for compensation.

(2) A right to compensation exists if:

(a) the goods are not special forfeited goods within the meaning of section 205D; and

(b) the goods were not used or otherwise involved in the commission of an offence; and

(c) the person establishes, to the satisfaction of the court:

(i) that he or she is the rightful owner of the goods; and

(ii) that there were circumstances providing a reasonable excuse for the failure to claim the goods not later than 30 days after the day the seizure notice was served.

(3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to:

(a) if the goods have been sold—the proceeds of the sale; and

(b) if the goods have been destroyed—the market value of the goods at the time of their destruction.

Effect of forfeiture

205G. When goods are, or are taken to be, condemned as forfeited to the Crown, the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

Immediate disposal of certain goods

206. (1) If:

(a) goods are seized under a seizure warrant or under subsection 203B (2); and

(b) the goods are perishable goods or live animals; and

(c) the CEO or a Regional Director for a State or Territory is satisfied that the retention of the goods would constitute:

(i) a danger to public health; or

(ii) if the goods are live animals—a danger to the health of other animals or a danger to plants or to agricultural produce;

the CEO or Regional Director concerned may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

(2) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2); and

(b) the goods are a vessel in the possession of an officer of Customs; and

(c) the CEO or a Regional Director for a State or Territory is satisfied that the vessel is so unseaworthy that its custody or maintenance is impracticable;

the CEO or Regional Director concerned may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

(3) As soon as practicable, but not later than 7 days after the goods referred to in subsection (1) or (2) have been dealt with, the CEO or Regional Director concerned must give or publish a notice in accordance with subsection (5).

(4) The notice must be in writing and must be served:

(a) personally or by post on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized; or

(b) if no person of the kind referred to in paragraph (a) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.

(5) The notice must:

(a) identify the goods; and

(b) state that the goods have been seized under a seizure warrant or under subsection 203B (2) and give the reason for the seizure; and

(c) state that the goods have been dealt with under subsection (1) or (2) and specify the manner in which they have been so dealt with and the reason for doing so; and

(d) set out the terms of subsection (6).

(6) If goods are dealt with in accordance with subsection (1) or (2), the owner of the goods may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the goods at the time they were so dealt with.

(7) A right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) or (2) exists if:

(a) the goods are not special forfeited goods within the meaning of section 205D; and

(b) the goods were not used or otherwise involved in the commission of an offence; and

(c) the owner of the goods establishes, to the satisfaction of the Court, that the circumstances for them to be so dealt with did not exist.

(8) If a person establishes a right to recover the market value of the goods at the time they were dealt with, the Court must order the payment by the Commonwealth of an amount equal to that value at that time.

Immediate disposal of narcotic goods

207. (1) If:

(a) goods are seized under a seizure warrant or under subsection 203B (2) or 203C (2); and

(b) the goods are reasonably believed by the Commissioner of Police or a Deputy Commissioner of Police to be special forfeited goods that are narcotic goods;

the Commissioner or Deputy Commissioner may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

(2) If goods are dealt with in accordance with subsection (1), the owner of the goods may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the goods at the time they were so dealt with.

(3) A right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) exists if:

(a) the goods are not special forfeited goods; and

(b) the goods were not used or otherwise involved in the commission of an offence; and

(c) the owner of the goods establishes, to the satisfaction of the Court, that the circumstances for them to be so dealt with did not exist.

(4) If a person establishes a right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) or (2), the Court must order the payment by the Commonwealth of an amount equal to that value at that time.

Release of goods on security

208. (1) This section applies to goods:

(a) that have been seized under a seizure warrant; and

(b) that are not special forfeited goods; and

(c) that are not taken to be forfeited to the Crown under section 205C; and

(d) in respect of which proceedings have not yet been brought by the Commonwealth under section 205D.

(2) The owner of the goods may apply to a court of summary jurisdiction for an order that the goods be released to the owner on provision to the CEO of security for an amount determined by the court in accordance with subsection (4).

(3) In determining whether or not to order the release of the goods on provision of a security, the court may have regard to:

(a) the impact that the continued retention of the goods would have on the economic interests of third parties; and

(b) whether the continued retention of the goods would prevent the provision of services by third parties which would place at risk the health, safety or welfare of the community; and

(c) any other like matters that the court considers relevant.

(4) For the purposes of this section, the security to be provided in respect of the goods is security for an amount determined by the court that does not exceed the sum of:

(a) the market value of the goods at the time when the order is made; and

(b) the costs incurred by Customs for storage of the goods from the time of their seizure until the time of their release under this section;

reduced by the amount of any duty that has been paid on the goods.

(5) If the security is given, the CEO is to release the goods to the applicant.

Service by post

208C. For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a seizure notice under section 205 or a notice under subsection 206 (3) 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.

Disposal of forfeited goods

208D. All goods seized under a seizure warrant or under subsection 203B (2) or 203C (2) that are taken to be condemned as forfeited to the Crown under section 205C or that are so condemned under section 205D shall be dealt with and disposed of in accordance with:

(a) in the case of goods other than narcotic-related goods—the directions of the CEO; or

(b) in the case of narcotic goods—the directions of the Commissioner of Police or a Deputy Commissioner of Police; or

(c) in the case of narcotic-related goods other than narcotic goods—in accordance with section 208DA.

Disposal of narcotic-related goods other than narcotic goods

208DA. (1) In this section:

"condemned goods" means goods seized under a seizure warrant or under subsection 203B (2) or 203C (2):

(a) that are taken to be condemned as forfeited to the Crown under section 205C; or

(b) that are so condemned under section 205D;

"Official Trustee" means the Official Trustee in Bankruptcy;

"prescribed officer" means a Senior Executive Service Officer in the Attorney-General's Department appointed or employed under the *Public Service Act 1922*;

"Trust Fund" means the Confiscated Assets Trust Fund established by the *Proceeds of Crime Act 1987*.

(2) All condemned goods that are narcotic-related goods (other than narcotic goods) must, subject to any direction given under subsection (4) in relation to those goods, be transferred to the Official Trustee to be dealt with under subsection (3).

(3) Where goods are transferred to the Official Trustee under subsection (2), the Official Trustee must, as soon as practicable:

(a) if the goods are money—pay the money to the Trust Fund as required by section 34B of the *Proceeds of Crime Act 1987*; and

(b) if the goods are not money:

(i) sell or otherwise dispose of the goods; and

(ii) apply the proceeds of the sale or disposition in payment of the Official Trustee's remuneration and other costs, charges and expenses of the kind referred to in section 243P payable to or incurred by it in connection with the sale or disposition; and

(iii) pay the remainder of those proceeds to the Trust Fund as required by section 34B of the *Proceeds of Crime Act 1987*.

(4) If condemned goods consist of, or include, narcotic-related goods (other than narcotic goods), the Attorney-General, or a prescribed officer authorised by the Attorney-General for the purposes of this section, may, at any time before the condemned goods are sold or otherwise disposed of under subsection (2), direct that those narcotic-related goods be disposed of, or otherwise dealt with, as specified in the direction.

Sales subject to conditions

208E. Where a ship or aircraft is sold under section 206 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:

(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.

Power to impound certain forfeited goods and release them on payment of duty and penalty

209.[2] **(1)** This section applies to dutiable goods that are forfeited by virtue of paragraph 229 (1) (a), (g), (o), (p) or (q) (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 subsection (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, instead of seizing the goods under a seizure warrant, impound the goods.

(3) An officer shall not exercise his powers under subsection (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 $5,000.

(3A) Subject to subsection (3B), where, under a seizure warrant, an officer has power to seize any goods that are, or that he has reason to believe are, goods to which this section applies, not being goods

found by him in the course of a search referred to in subsection (2), the officer may, in lieu of seizing the goods under that section, impound the goods.

(3B) An officer shall not exercise his powers under subsection (3A) to impound goods if, in the opinion of the officer, the amount of duty sought to be evaded in respect of the goods exceeds $5,000.

(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:

(iv) where the goods were impounded under subsection (2), that the article, articles or goods so identified have been impounded under that subsection; or

(v) where the goods were impounded under subsection (3A), that the article, articles or goods so identified have been impounded under that subsection;

(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, subsections (6) and (7); and

(e) specifying the address at which payment under subsection (6) may be made in respect of the goods.

(6) Where the owner of an article or goods identified in a notice served under subsection (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:

(a) where the notice states that the goods were impounded under subsection (2)—an amount specified in the notice, being an amount equal to the amount of that duty that, in the opinion of the officer issuing the notice, the owner has sought to evade; or

(b) where the notice states that the goods were impounded under subsection (3A)—an amount specified in the notice, being an amount equal to twice the amount of that duty that, in the opinion of the officer issuing the notice, the owner has sought to evade;

the following provisions apply:

(c) the Collector shall authorize the delivery of the article or goods to the owner;

(d) the article ceases, or the goods cease, to be forfeited; and

(e) proceedings shall not be brought for an 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 subsection (5) does not pay duty and penalty in respect of the article or goods in accordance with subsection (6), the article or goods are taken:

(a) to have been seized under a seizure warrant at the end of 21 days after the notice is served; and

(b) to have been so seized by the officer who served the notice under subsection (5).

(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 subsection (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.

Destruction or concealment of evidential material or forfeited goods

209A. A person must not:

(a) destroy, or render incapable of identification, a document or thing that is, or may be, evidential material or a forfeited good; or

(b) render illegible or indecipherable such a document or thing; or

(c) place or conceal on his or her body, or in any clothing worn by the person, such a document or thing;

with the intention of preventing it from being seized by an authorised person in the exercise of the person's powers under a search warrant, a seizure warrant or section 203B or 203C.

Penalty: Imprisonment for 2 years.

Subdivision H—Powers of arrest

Persons suspected of smuggling etc.

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.

(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.

(2) No person shall resist, obstruct, or prevent the arrest of any person in pursuance of this section.

Penalty: $1,000.

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.

Subdivision J—Auditing of commercial documents

Power of officers to inspect commercial documents in certain circumstances

214AA. (1) Where:

(a) a person has been authorised:

(i) to take goods into home consumption under section 69, 70 or 77D; or

(ii) to take goods into home consumption, to warehouse goods, or to tranship goods, under section 71B; or

(iii) to deal with goods under section 114C; and

(b) the CEO or Collector has reasonable grounds to believe that there are on any premises, other than residential premises, occupied by that person in the course of his or her business, commercial documents relating to information supplied in connection with:

(i) a return under paragraph 69 (5) (c), 70 (7) (a) or 77D (5) (a) in respect of goods referred to in subparagraph (a) (i); or

(ii) an entry under section 71A in respect of goods referred to in subparagraph (a) (ii); or

(iii) an entry under section 114 in respect of goods referred to in subparagraph (a) (iii);

an authorised officer:

(c) may, at all reasonable times within 5 years after the return has been given or the entry communicated to Customs, as the case requires, enter and remain on those premises;

(d) is entitled to full and free access at all reasonable times to any such documents on those premises; and

(e) may inspect, examine, make copies of, or take extracts from, any such documents on those premises;

for the purpose of verifying that information.

(2) An authorised officer is not entitled to enter on any premises under this section unless, before so doing, the officer produces to the person occupying, or apparently in charge of, the premises written evidence of the fact that he or she is an authorised officer.

(3) The person occupying, or apparently in charge of, premises entered by an officer under subsection (1) shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: $1,000.

Power of officers to inspect commercial documents in other circumstances

214AB. (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises and exercise the powers of an authorised officer under this section in relation to those premises.

(2) Where the CEO or a Collector has reasonable grounds for believing that there are on any premises commercial documents relating to information that was supplied to a Collector for purposes connected with a return given to Customs under section 69, 70 or 77D or an entry communicated to Customs under section 71A or 114, the CEO or that Collector may make an application to a Magistrate for a warrant authorising an authorised officer who is nominated for the purpose to enter the premises and to exercise the powers of an authorised officer under this section in relation to those premises.

(3) If, on an application under subsection (2), the Magistrate is satisfied, by information on oath or affirmation, that:

(a) there is reasonable ground for believing that there are on the premises the subject of the application commercial documents of the kind referred to in subsection (2); and

(b) the occupier of the premises has not given consent for an authorised officer to enter the premises and exercise the powers of an authorised officer under this section in relation to those premises;

the Magistrate shall grant a warrant authorising the nominated authorised officer, with such assistance as the officer thinks necessary and if necessary by force, to enter the premises, during such hours of the day or night as the warrant specifies, or, if the warrant so specifies, at any time, and to exercise the powers of an authorised officer under this section in relation to those premises.

(4) There shall be included in a warrant issued under this section:

(a) a statement of the purpose for which the warrant is issued; and

(b) the time, not being a time more than 30 days after the day of issue of the warrant, at which the warrant ceases to have effect.

(5) Where premises entered by an authorised officer under this section are occupied at the time of the entry, the person occupying, or apparently in charge of, the premises shall provide the officer with all reasonable facilities and assistance for the effective exercise of his or her powers under this section.

Penalty: $1,000.

(6) An authorised officer who has entered premises under a warrant shall, upon request of a person occupying, or apparently in charge of, the premises, produce the warrant for inspection by that person.

(7) The powers of an authorised officer under this section in relation to premises are:

(a) to search the premises for commercial documents relating to the entry of the goods concerned; and

(b) to inspect, examine, make copies of, or take extracts from, any such documents found on those premises.

Warrants may be granted by telephone etc.

214AC. **(1)** Where, by reason of circumstances of urgency, the CEO or a Collector considers it necessary to do so, he or she may make an application for a warrant under subsection 214AB (2) by radio, telephone or other means of communication, in accordance with this section.

(2) Before so making application, the CEO or a Collector shall prepare an information of a kind referred to in subsection 214AB (3) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.

(3) Where a Magistrate to whom an application under subsection (1) is made is satisfied:

(a) after having considered the terms of the information prepared in accordance with subsection (2); and

(b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate shall complete and sign such a search warrant as the Magistrate would issue under section 214AB if the application had been made in accordance with that section.

(4) Where a Magistrate signs a warrant under subsection (3):

(a) the Magistrate shall inform the CEO or a Collector of the terms of the warrant and the date on which and the time at which it was signed, and record on the warrant the reasons for the granting of the warrant; and

(b) the CEO or a Collector shall complete a form of warrant in the terms furnished to him or her by the Magistrate and write on it:

(i) the name of the Magistrate;

(ii) the date on which and the time at which the warrant was signed; and

(iii) particulars of a means of communication with the Magistrate nominated by the Magistrate for purposes of verifying the issue of the warrant.

(5) Where the CEO or a Collector completes a form of warrant in accordance with subsection (4), he or she shall, not later than the day next following the last day on which the warrant has effect, forward to the Magistrate who signed the warrant the form of warrant completed by the CEO or a Collector and the information duly sworn in connection with the warrant.

(6) Upon receipt of the documents referred to in subsection (5), the Magistrate shall attach to them the warrant signed by the Magistrate and deal with the documents in the manner in which the Magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 214AB.

(7) A form of warrant duly completed by the CEO or a Collector in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the Magistrate, authority for any entry of an authorised officer of premises specified in the warrant, and for the exercise by the authorised officer of the powers of an authorised officer as set out in subsection 214AB (7) in relation to those premises.

(8) An authorised officer who has entered premises under authority of a warrant issued under this section shall, upon request of a person occupying, or apparently in charge of, the premises, produce a form of the warrant that authorised that entry, duly completed by the CEO or a Collector in accordance with subsection (4), for inspection by that person.

(9) Where it is material, in any proceedings, for a court to be satisfied that an entry of premises or the exercise of the powers of an authorised officer within the meaning of subsection 214AB (7) was authorised in accordance with this section, and the warrant signed by a Magistrate in accordance with this section authorising the entry or

exercise of those powers is not produced in evidence, the court shall assume, unless the contrary is proved, that the entry or exercise of those powers was not authorised by such a warrant.

Powers of officers for purposes of section 164

214A. **(1)** For the purposes of section 164 or of regulations made for the purposes of that section, an authorized officer may, at all reasonable times, enter:

(a) premises where diesel fuel is used or stored; or

(b) premises where there are kept any accounts, books, or other records relating to the purchase, sale or use of diesel fuel;

and may:

(c) inspect or take stock of any diesel fuel; and

(d) inspect any such accounts, books, documents or other records;

and may make and retain copies of, or take and retain extracts from, any such accounts, books, documents or other records.

(2) Where an authorized officer proposes to enter any premises under subsection (1), he shall, if requested to do so by the occupier or person in charge of the premises, produce for inspection written evidence of the fact that he is an authorized officer and, if he fails to do so, he is not authorized to enter the premises.

(3) The occupier or person in charge of premises referred to in paragraph (1) (a) or (b) shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his powers under subsection (1).

Penalty: $1,000.

(4) An authorized officer may, by notice signed by him, require a person whom he believes to be capable of giving information that is relevant to the operation of section 164 or of regulations made for the purposes of that section and relates to the purchase, sale or use of diesel fuel to attend before him at the time and place specified in the notice and there to answer questions and produce to him such accounts, books, documents or other records in relation to the purchase, sale or use of diesel fuel as are referred to in the notice.

(5) An authorized officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced in pursuance of subsection (4).

(6) A person is not excused from answering a question or producing any accounts, books, documents or other records when required to do so under subsection (4) on the grounds that the answer to the question, or the production of the accounts, books, documents or

other records, might tend to incriminate him or make him liable to a penalty, but his answer to any such question or the production by him of any such accounts, books, documents or other records is not admissible in evidence against him in proceedings other than proceedings for an offence against paragraph (9) (c) or an offence against paragraph 234 (1) (b) or (d) in relation to a rebate under section 164.

(7) An authorized officer may examine, on oath or affirmation, a person attending before him in pursuance of subsection (4) and, for that purpose, may administer an oath or affirmation to that person.

(8) The oath or affirmation to be made by a person for the purposes of subsection (7) is an oath or affirmation that the answers he will give to questions asked him will be true.

(9) A person shall not, without reasonable excuse, refuse or fail:

(a) to attend before an authorized officer;

(b) to make an oath or an affirmation; or

(c) to answer a question or produce an account, book, document or other record;

when so required in pursuance of this section.

Penalty: $1,000.

Powers of officers for purposes of *Customs Tariff (Anti-Dumping) Act 1975*

214B. (1) For the purposes of the *Customs Tariff (Anti-Dumping) Act 1975* an authorized officer may, at all reasonable times, enter premises where there are kept any accounts, books or other records relating to goods exported to Australia or manufactured or produced, or sold, in Australia and may inspect any such accounts, books, documents or other records and make and retain copies of, or take and retain extracts from, any such accounts, books, documents or other records.

(2) Where an authorized officer proposes to enter any premises under subsection (1), he shall, if requested to do so by the occupier or person in charge of the premises, produce for inspection written evidence of the fact that he is an authorized officer and, if he fails to do so, he is not authorized to enter the premises.

(3) The occupier or person in charge of premises referred to in subsection (1) shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his powers under subsection (1).

Penalty: $1,000.

(4) An authorized officer may, by notice signed by him, require a person whom he believes to be capable of giving information that is relevant to the operation of the *Customs Tariff (Anti-Dumping) Act 1975* and relates to goods exported to Australia or manufactured or produced, or sold, in Australia to attend before him at the time and place specified in the notice and there to answer questions and produce to him such accounts, books, documents or other records in relation to goods exported to Australia or manufactured or produced, or sold, in Australia as are referred to in the notice.

(5) An authorized officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced in pursuance of subsection (4).

(6) A person is not excused from answering a question or producing any accounts, books, documents or other records when required to do so under subsection (4) on the grounds that the answer to the question, or the production of the accounts, books, documents or other records, might tend to incriminate him or make him liable to a penalty, but his answer to any such question or the production by him of any such accounts, books, documents or other records is not admissible in evidence against him in proceedings other than proceedings for an offence against this section or proceedings in respect of the falsity of any such answer.

(7) An authorized officer may examine, on oath or affirmation, a person attending before him in pursuance of subsection (4) and, for that purpose, may administer an oath or affirmation to that person.

(8) The oath or affirmation to be made by a person for the purposes of subsection (7) is an oath or affirmation that the answers he will give to questions asked him will be true.

(9) A person shall not, without reasonable excuse, refuse or fail:

(a) to attend before an authorized officer;

(b) to make an oath or an affirmation; or

(c) to answer a question or produce an account, book, document or other record;

when so required in pursuance of this section.

Penalty: $1,000.

Subdivision K—Miscellaneous

Nature of functions of magistrate under sections 203S and 205E

214BA. (1) A function of making an order conferred on a magistrate by section 203S or 205E is conferred on the magistrate in a personal capacity and not as a court or a member of a court.

(2) Without limiting the generality of subsection (1), an order made by a magistrate under section 203S or 205E has effect only by virtue of this Act and is not taken, by implication, to be made by a court.

(3) A magistrate performing a function of, or connected with, making an order under section 203S or 205E has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).

(4) The Governor-General may make arrangements with the Governor of a State, the Chief Minister of the Australian Capital Territory, the Administrator of the Northern Territory or the Administrator of Norfolk Island for the performance, by all or any of the persons who from time to time hold office as magistrates in that State or Territory, of the function of making orders under section 203S or 205E.

Collector may impound documents

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.

Translations of foreign invoices

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.

Customs samples

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.

General power of Collector

219. In all cases not herein otherwise provided for the Collector may exercise any power exercisable by the Customs.

Division 1A—The Use of Listening Devices in relation to Narcotics Offences

Interpretation

219A. (1) In this Division:

"chief officer", in relation to a Commonwealth law enforcement agency, means:

(a) where the agency is the National Crime Authority—the Chairman of that Authority; and

(b) where the agency is the Australian Federal Police—the Commissioner of Police;

"Commonwealth law enforcement agency" means the National Crime Authority or the Australian Federal Police;

"Judge" means:

(a) a Judge of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory in relation to whom a consent under subsection 219AA (1), and a nomination under subsection 219AA (2), are in force;

(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;

"official", in relation to a Commonwealth law enforcement agency, means:

(a) where the agency is the National Crime Authority—a member of the Authority or a member of the staff of the Authority; and

(b) where the agency is the Australian Federal Police—a member of the Australian Federal Police or another person under the authority of the Commissioner of Police;

"premises" includes:

(a) any structure, building, aircraft or ship, or a vehicle or other carriage; and

(b) any land (whether or not enclosed or built on); and

(c) any part of premises (including premises of a kind referred to in paragraph (a) or (b));

"prescribed offence" means:

(a) a narcotics offence; or

(b) an offence (other than a narcotics offence) against a 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;

"relevant proceeding" means:

(a) a proceeding by way of prosecution for a prescribed offence;

(b) a proceeding under a law of the Commonwealth, or of a State or Territory, relating to confiscation or forfeiture of property, or the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence;

(c) a proceeding for the taking of evidence in Australia for transmission to a foreign country for use in any proceeding for the surrender of a person to Australia, in so far as that first-mentioned proceeding relates to a prescribed offence; or

(d) a proceeding for the extradition of a person from New Zealand to Australia, or from a State or Territory to another State or Territory in so far as that proceeding relates to a prescribed offence.

(2) In this Division, unless the contrary intention appears:

(a) a reference to narcotics inquiries that are being made by officials of a Commonwealth law enforcement agency shall be read as a reference to:

(i) inquiries that are being made by officials of the agency 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 officials of the agency in relation to the likely commission of that offence;

(b) a reference to narcotics inquiries that have been made by officials of a Commonwealth law enforcement agency shall be read as a reference to:

(i) inquiries that have been made by officials of the agency 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 officials of the agency in relation to the likely commission of that offence;

(c) a reference to a proceeding under a law of the Commonwealth for the confiscation or forfeiture of property, or for the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence includes a reference to:

(i) a proceeding for the condemnation or recovery of a ship or aircraft, or of goods, seized under a seizure warrant or under subsection 203B (2) or 203C (2) under section 203 in connection with the commission of a narcotics offence;

(ii) a proceeding by way of an application for an order under subsection 243B (1); or

(iii) a proceeding by way of an application for an order or a warrant under the *Proceeds of Crime Act 1987*; and

(d) a reference to a proceeding under a law of a State or Territory for the confiscation or forfeiture of property in connection with the commission of a prescribed offence includes a reference to any proceeding under a law of that State or Territory relating to a restraint of dealing with the proceeds of crime.

Certain Judges eligible to issue warrants for use of listening devices

219AA. (1) A Judge of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory may, by writing, consent to be nominated by the Minister under subsection (2).

(2) The Minister may, by writing, nominate a Judge of a court referred to in subsection (1) in relation to whom a consent is in force under that subsection to be a Judge for the purposes of this Division.

Use of listening devices

219B. (1) It is unlawful for an official of a Commonwealth law enforcement agency to use, for the purposes of narcotics inquiries that are being made by officials of the agency, a listening device for the purpose of listening to or recording words while they are being spoken by a person unless:

(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 to the agency under this Division.

(2) It is unlawful for a person acting by arrangement with an official of a Commonwealth law enforcement agency to use, for the purposes of narcotics inquiries that are being made by officials of the agency, 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.

(3) It is the duty of the chief officer of each Commonwealth law enforcement agency to take reasonable steps to ensure that subsections (1) and (2) are not contravened by officials of the agency.

(4) Notwithstanding any law of a State or Territory:

(a) an official of a Commonwealth law enforcement agency does not act unlawfully by reason only of using a listening device as referred to in subsection (1) in circumstances to which paragraph (a), (b) or (c) of that subsection is applicable; and

(b) a person acting by arrangement with an official of a Commonwealth law enforcement agency does not act unlawfully by reason only of using a listening device as referred to in subsection (2) in circumstances in which the use of that device is not declared to be unlawful by that subsection.

(4A) Application for the issue of a warrant to a Commonwealth law enforcement agency under this section shall be made on the agency's behalf by:

(a) where the agency is the National Crime Authority—a member of the Authority or a member of a police force who is a member of the staff of the Authority; and

(b) where the agency is the Australian Federal Police—a member of the Australian Federal Police.

(5) Where, upon application being made to a Judge for the issue of a warrant to a Commonwealth law enforcement agency 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:

(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 officials of the agency of a listening device to listen to or record words spoken by or to that person will, or is likely to, assist officials of the agency 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

(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 officials of the agency, 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 officials of the agency 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 subsection (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.

(7) Where, upon application being made to a Judge for the issue of a warrant to a Commonwealth law enforcement agency 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 officials of the agency of a listening device to listen to or record words spoken by or to persons in those premises will, or is likely to, assist officials of the agency 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 officials of the agency, 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 officials of the agency 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 subsection (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 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) Subsection (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 (whether or not in contravention of subsection 7 (1) of that Act) of a communication passing over a telecommunications system within the meaning of that Act.

Information to be given in support of application for warrant

219C. Information furnished to a Judge for the purposes of subsection 219B (5) or (7):

(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.

Exercise of powers under warrant

219D. (1) The authority conferred by a warrant issued to a Commonwealth law enforcement agency under section 219B shall be exercised only by the chief officer of the agency or by other officials of the agency approved, for the purposes of that warrant or of warrants issued under that section, by the chief officer or by an authorised official of the agency.

(2) In subsection (1), a reference to an authorised official of a Commonwealth law enforcement agency is a reference to an official of the agency appointed by the chief officer of the agency, by writing, to be an authorised official of the agency for the purposes of this section.

Discontinuance of action before expiration of warrant

219E. Where, before a warrant granted to a Commonwealth law enforcement agency under this Division ceases to be in force, the chief officer of that agency is satisfied that the grounds on which the warrant was issued have ceased to exist, he or she 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 signed by him or her, revoke the warrant.

Certain information not to be disclosed

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 officials of a Commonwealth law enforcement agency, being information that has come to his knowledge or into his possession by reason of his being, or having been, an official of the agency or by reason of his having entered into an arrangement with an official of the agency to use a listening device for the purpose of those inquiries, except for the purposes of those inquiries.

Penalty: Imprisonment for 3 years.

(2) Notwithstanding subsection (1), the chief officer of a Commonwealth law enforcement agency may, in accordance with the following paragraphs, personally or by another official of the agency authorised by the chief officer, communicate information obtained by using a listening device for the purposes of narcotics inquiries that are being, or have been, made by officials of the agency:

(a) where the information relates, or appears to relate, to the commission, or intended commission, of a prescribed offence—the information may be communicated, for the purpose of the investigation of the offence, to:

(i) an official of that agency; or

(ii) an official of the other Commonwealth law enforcement agency; or

(iii) an officer of the Police Force of a State or Territory; and

(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.

(3) Without limiting the purposes for which a person may, in accordance with subsection (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 officials of a Commonwealth law enforcement agency, for a purpose connected with:

(a) the making by an authority, body or person of a decision whether or not to begin a relevant proceeding; or

(b) the conduct of a relevant proceeding.

(4) Where a person is prosecuted before a Court for a prescribed offence, the Court may, in its discretion, refuse to permit information referred to in subsection (3) 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.

Certain records to be destroyed

219G. Where, by virtue of a warrant issued to a Commonwealth law enforcement agency under this Division, any record or copy has been made and the chief officer of the agency is satisfied:

(a) that the record or copy will not assist, and is not likely to assist, officials of the agency 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, a relevant proceeding; or

(ii) in, or in connection with, the exercise by officials of the agency of the powers conferred on the chief officer of the agency by subsection 219F (2);

the chief officer of the agency shall cause the record or copy to be destroyed.

Warrants etc. to be retained

219H. The chief officer of a Commonwealth law enforcement agency shall cause to be retained in the records of the agency all warrants issued to the agency 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.

Reports to be made to Minister concerning use of listening devices

219K. (1) The chief officer of a Commonwealth law enforcement agency shall furnish to the Minister a copy of each warrant issued to the agency 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.

(2) The chief officer of a Commonwealth law enforcement agency shall give the Minister, in respect of each warrant issued to the agency under section 219B, a report in writing with respect to the use, whether the use was for the purposes of narcotics inquiries or otherwise, made by officials of the agency of information obtained by using a listening device under the warrant and the communication of any information so obtained to persons other than officials of the agency.

Division 1B—Detention and search of suspects

Subdivision A—Detention and frisk search of suspects

Detention for frisk search

219L. (1) Where a detention officer suspects on reasonable grounds that a person is unlawfully carrying any prohibited goods, an officer of Customs may, while a person is at a place identified under section 234AA as a place of a kind referred to in that section, detain the person at the place for the purposes of being searched under this Subdivision.

(2) Without limiting the generality of subsection (1), a suspicion on reasonable grounds includes a suspicion reasonably formed on the basis of any of the following:

(a) the person's travel itinerary, including plans in relation to places that have been visited or are intended to be visited by the person;

(b) declarations or statements made under a law of the Commonwealth by the person in the course of arriving in or departing from Australia;

(c) documents in the person's possession, including passports, visas or tickets;

(d) unusual behaviour of the person observed by or reported to an officer of Customs;

(e) the contents of or appearance of the person's baggage.

Frisk search

219M. (1) A frisk search of a person detained under section 219L is not to be carried out unless it is carried out:

(a) as soon as practicable after the detainee is detained; and

(b) by an officer of Customs who is of the same sex as the detainee.

(2) Before carrying out the frisk search, the officer of Customs must:

(a) advise the detainee of the detainee's right to request that the search be carried out in an area of the place of detention that would, in the CEO's opinion, provide adequate personal privacy to the detainee during the search; and

(b) if the detainee so requests, take the detainee to such an area.

Power to require production of things

219N. The officer of Customs carrying out the frisk search may require the production of any things found, as a result of the search, to be carried by the detainee in order to determine whether they are, or contain, prohibited goods unlawfully carried by the detainee.

Persons to whom section 219R applies

219P. Section 219R applies to a person detained under section 219L if:

(a) the detainee refuses to submit to a frisk search under this Subdivision; or

(b) the detainee, having submitted to the frisk search, refuses to produce a thing that he or she is required to produce under section 219N.

Subdivision B—Detention and external search of suspects

Detention for external search

219Q. (1) Where a detention officer or police officer suspects on reasonable grounds that a person is unlawfully carrying any prohibited goods, an officer of Customs or police officer may detain the person for the purposes of being searched under this Subdivision.

(2) Where a person is so detained, an officer of Customs or police officer must, as soon as practicable, take the person to:

(a) a detention place that the officer considers suitable for the detention of the person for the purposes of this Subdivision; or

(b) a place (other than a detention place):

(i) if the person is detained by a detention officer—that, in the CEO's opinion, affords adequate personal privacy to the person; or

(ii) if the person is detained by a police officer—that, in the police officer's opinion, affords adequate personal privacy to the person.

External search

219R. (1) Where:

(a) by force of section 219P, this section applies to a person detained under section 219L; or

(b) a detention officer or police officer suspects on reasonable grounds that a person detained under section 219Q is unlawfully carrying prohibited goods;

then:

(c) if:

(i) there are reasonable grounds to believe that the detainee is not in need of protection; and

(ii) the detainee consents to be searched;

an officer of Customs or police officer must, as soon as practicable, carry out an external search of the detainee; or

(d) in any other case, the detention officer or police officer must, as soon as practicable, apply to an authorised officer, the CEO, or a Justice, for an order for an external search of the detainee.

(2) Subject to subsection (3), the person to whom an application is made may order that an external search of the detainee be carried out.

(3) The person must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is unlawfully carrying prohibited goods.

(4) Where the person does not make such an order, he or she must order that the detainee be released immediately.

(5) If an external search of the detainee is ordered and the person making the order is satisfied that the detainee is in need of protection, the person must order that the search be carried out in the presence of:

(a) the detainee's legal guardian; or

(b) a specified person (not being an officer of Customs or a police officer) who is capable of representing the detainee's interests in relation to the search.

(6) So far as is practicable, a person mentioned in an order under subsection (5) as the person in whose presence an external search is to be carried out must be acceptable to the detainee.

(7) Subject to subsection (8), the detainee may at any time communicate with another person.

(8) An officer of Customs or police officer may stop the detainee from communicating with another person if the officer believes on reasonable grounds that such communication should be stopped in order to:

(a) safeguard the processes of law enforcement; or

(b) protect the life and safety of any person.

(9) Where:

(a) an external search of the detainee is ordered; and

(b) a detention officer or police officer still suspects on reasonable grounds that the detainee is unlawfully carrying prohibited goods;

the detention officer or police officer must ensure that an external search of the detainee is carried out as soon as practicable.

(10) The search must be carried out:

(a) by an officer of Customs or a police officer; and

(b) in accordance with the order and this section.

(11) An external search of the detainee is to be carried out by a person who is of the same sex as the detainee.

(12) While:

(a) a person is detained under section 219L and, by force of section 219P, this section applies to the person; or

(b) a person is detained under section 219Q;

a detention officer or police officer may question the person:

(c) for the purpose of carrying out an external search of the person under this section; or

(d) concerning any prohibited goods found to have been illegally carried by the person as a result of the carrying out of an external search of the person under this section.

(13) The detention officer or police officer must not question the detainee under subsection (12) unless the detention officer or police officer has informed the detainee:

(a) that the detainee is not obliged to answer any questions asked of him or her; and

(b) that anything said by him or her may be used in evidence; and

(c) of his or her right to communicate with another person.

(14) In this section:

"authorised officer" means an officer of Customs who is a member of a class of officers of Customs declared by the CEO to be authorised officers in relation to particular circumstances or places.

Subdivision C—Detention and internal search of persons suspected of internally concealing substances etc.

Certain Judges and Magistrates eligible to give orders under this Subdivision

219RA. (1) A Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory or of the Family Court of Australia may, by writing, consent to be nominated by the Minister under subsection (2).

(2) The Minister may, by writing, nominate a Judge of a court referred to in subsection (1) in relation to whom a consent is in force under that subsection to be a Division 1B Judge.

Initial detention

219S. (1) Where a detention officer or police officer suspects on reasonable grounds that a person is internally concealing a suspicious substance, an officer of Customs or police officer may detain the person for the purposes of enabling an application for an order for the detention of the person under section 219T to be made.

(2) If the person is so detained, an officer of Customs or police officer:

(a) must, as soon as practicable, take the person to the nearest detention place that the officer considers suitable for the detention of the person for the purposes of this Subdivision; and

(b) may, subject to subsections 219Z (3), (4), (5) and (6), detain the person at that place for those purposes.

Initial order for detention

219T. (1) Where a person is detained under section 219S and subsection 219V (2) does not apply, the CEO or a police officer must, as soon as practicable, apply:

(a) if there are reasonable grounds to suspect that the person is in need of protection—to a Division 1B Judge; or

(b) in any other case—to a Division 1B Judge or a Division 1B Magistrate;

for an order that the detainee be detained.

(2) Subject to subsection (3), the Judge or Magistrate may order that the detainee be detained under this section for a period of 48 hours from:

(a) the time at which the detention began; or

(b) the time at which the order is made;

as the Judge or Magistrate thinks fit.

(3) The Judge or Magistrate must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

(4) Where the Judge or Magistrate does not make such an order, he or she must order that the detainee be released immediately.

(5) Where:

(a) a Judge or Magistrate orders that a detainee be detained under this section; and

(b) the Judge or Magistrate is satisfied that the detainee is in need of protection;

the Judge or Magistrate must appoint a person (not being an officer of Customs or police officer) to represent the detainee's interests in relation to this Division until the detainee is no longer in need of protection.

(6) So far as is practicable, a person so appointed must be acceptable to the detainee.

Renewal of order for detention

219U. (1) Where:

(a) a person is being detained under an order under section 219T; and

(b) a detention officer or police officer decides that a further period of detention is necessary in order to determine whether the person is internally concealing a suspicious substance;

the CEO or a police officer may apply:

(c) if there are reasonable grounds to suspect that the detainee is in need of protection—to a Division 1B Judge; or

(d) in any other case—to a Division 1B Judge or a Division 1B Magistrate;

for an order that the detainee be further detained.

(2) Subject to subsection (3), the Judge or Magistrate may order that the detainee be further detained under this section for a period of 48 hours from the end of the period for which the unexpired order is in force.

(3) The Judge or Magistrate must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

(4) Where the Judge or Magistrate does not make such an order, he or she must order that, at the end of the period for which the unexpired order is in force, the detainee be released immediately.

Arrangement for internal search

219V. (1) This section applies only so long as a detention officer or police officer suspects on reasonable grounds that the detainee is internally concealing a suspicious substance.

(2) If:

(a) there are no reasonable grounds to believe that the detainee is in need of protection; and

(b) the detainee signs a written consent to be internally searched;

an officer of Customs or police officer must, as soon as practicable, arrange for an internal search of the detainee.

(3) If:

(a) there are no reasonable grounds to believe that the detainee is in need of protection; and

(b) the detainee has been detained under section 219U; and

(c) the detainee has not signed a written consent to be internally searched;

the CEO or a police officer must, before the end of the period of detention under that section, apply to a Division 1B Judge for an order for an internal search of the detainee.

(4) If there are reasonable grounds to believe that the detainee is in need of protection, the CEO or a police officer must:

(a) if a person has been appointed under subsection 219T (5) or 219X (3) to represent the detainee's interests in relation to this Division and that person consents to the detainee being internally searched—as soon as practicable after the consent is given; or

(b) if paragraph (a) does not apply, and the detainee has been detained under section 219U—before the end of the period of that detention;

apply to a Division 1B Judge for an order for an internal search of the detainee.

(5) After the end of a period of detention under section 219S, 219T or 219U, the detainee may be further detained by force of this subsection:

(a) if subsection (2) applies—until the internal search is completed; or

(b) if subsection (3) or (4) applies—until an order under this section is granted.

(6) Subject to subsections (9) and (10), the Judge may order that the detainee:

(a) be internally searched, the search to start:

(i) if consent to the search has been given under paragraph (4) (a)—as soon as practicable after the order is made and no later than a time specified in the order; or

(ii) in any other case—no sooner than the end of the period of detention under section 219U, but as soon as practicable after the end of that period and no later than a time specified in the order; and

(b) be detained for so long as is reasonably necessary for the internal search to be completed.

(7) Where the Judge does not make such an order, he or she must order that the detainee be released immediately.

(8) Subject to subsections (9) and (10), on an application made by the CEO or a police officer within the time specified in an order under paragraph (6) (a), or the time as extended under this subsection, the Judge may extend that time.

(9) The Judge must not make an order under subsection (6), or grant an extension of time under subsection (8), unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

(10) Subject to subsection (11), the time specified in an order under paragraph (6) (a), including that time as extended under subsection (8), must not be later than 48 hours after:

(a) if the detainee is being detained under section 219S, 219T or 219U—the end of the period of that detention; or

(b) if the detainee is being detained under subsection (5)—the time when that detention began.

(11) If the Judge is satisfied that the detainee will refuse, or has refused, to submit to an internal search in spite of an order having been made under subsection (6), the time specified in the order under paragraph (6) (a), including that time as extended under subsection (8), is to be such time as the Judge considers appropriate in order to allow an internal search to be carried out.

Detention under this Subdivision

219W. (1) A person detained under this Subdivision may at any time:

(a) consult a lawyer; or

(b) subject to subsection (3), communicate with another person.

(2) Where a person detained under this Subdivision wishes to consult a lawyer, an officer of Customs or police officer must arrange for the person to consult a lawyer of the person's choice.

(3) An officer of Customs or police officer may stop a person so detained from communicating with another person if the officer believes on reasonable grounds that such communication should be stopped in order to:

(a) safeguard the processes of law enforcement; or

(b) protect the life and safety of any person.

(4) While a person is being detained under an order under this Subdivision, or has consented to an internal search under this Subdivision, a detention officer or police officer may ask the person such questions as are reasonable:

(a) to determine whether the person is internally concealing a suspicious substance; or

(b) concerning any such substance found to have been internally concealed by the person.

(5) The detention officer or police officer must not question the detainee under subsection (4) unless the detention officer or police officer has informed the detainee:

(a) that the detainee is not obliged to answer any questions asked of him or her; and

(b) that anything said by him or her may be used in evidence; and

(c) of his or her right to consult a lawyer or communicate with another person.

(6) While the person is detained under an order made under this Subdivision:

(a) subject to section 219ZG, the person is to be detained at a detention place; and

(b) the detention is to be conducted with such medical supervision as is specified in an order relating to the person's detention under this Subdivision; and

(c) the detainee, his or her representative or (where applicable) a person appointed under subsection 219T (5) or 219X (3) to represent the detainee's interests in relation to this Division may at any time apply to:

(i) if the order was made by a Judge—a Division 1B Judge; or

(ii) if the order was made by a Magistrate—a Division 1B Judge or a Division 1B Magistrate;

for the order to be revoked.

Detainee becoming in need of protection

219X. (1) If:

(a) at any time while a person is being detained under this Subdivision, there are reasonable grounds to believe that the detainee has become in need of protection; and

(b) until that time, the detainee has not been treated under this Subdivision as being in need of protection;

the CEO or a police officer must, as soon as practicable, apply for an order under this section.

(2) The application is to be made:

(a) if the person is being detained under an order made by a Division 1B Judge or Division 1B Magistrate—to such a Judge or Magistrate, as the case may be; or

(b) if not—to a Division 1B Judge.

(3) The Judge or Magistrate must, if satisfied that the detainee is in need of protection, appoint a person (not being an officer of Customs or a police officer) to represent the detainee's interests in relation to this Division until the detainee is no longer in need of protection.

(4) So far as is practicable, a person so appointed must be a person acceptable to the detainee.

Applications for orders under this Subdivision

219Y. (1) A detainee must be given adequate opportunity to obtain legal advice and legal representation in relation to an application for an order under this Subdivision.

(2) An application under this Subdivision may be made orally or in writing and, subject to subsection (5), must be made in person, and on oath or affirmation, at a hearing before the relevant Judge or Magistrate.

(3) Subject to subsection (4), the detainee has the right to be present at, to make submissions to, and to be represented before, any hearing before the Judge or Magistrate.

(4) The Judge or Magistrate, to the extent that he or she thinks necessary to:

(a) safeguard the processes of law enforcement; or

(b) protect the life and safety of any person;

may:

(c) restrict the rights under subsection (3) of the detainee to hear or have access to evidence presented by or on behalf of the CEO or a police officer; or

(d) order that a witness not be required to answer a question or to produce a document.

(5) Where it is not practicable to make an application under this Subdivision in person, the application may be made by telephone or any other appropriate method of communication, and:

(a) if the Judge or Magistrate so requires—the detainee or the detainee's representative is to be given an opportunity to make submissions to the Judge or Magistrate by the same method of communication; and

(b) as soon as practicable after making the application, the CEO or a police officer must give the Judge or Magistrate a statutory declaration setting out the facts and reasons supporting the application.

Internal search

219Z. (1) An internal search is to be carried out by a medical practitioner.

(2) Where the detainee is in need of protection, the search is to be carried out in the presence of the person appointed under subsection 219T (5) or 219X (3).

(3) Subject to subsection (5), the search is to be carried out at a place that:

(a) is specified in regulations made for the purposes of this subsection; or

(b) is provided with the technical, paramedical and other services prescribed for the purposes of this subsection.

(4) If the person is not being detained at such a place, an officer of Customs or police officer must, as soon as practicable:

(a) take the person to the nearest such place that the officer considers, on reasonable grounds, to be suitable for the search; and

(b) continue the person's detention at that place.

(5) The recovery, during the search, of a substance or thing internally concealed by the detainee is to be carried out at a place that:

(a) is specified in regulations made for the purposes of this subsection; or

(b) is provided with the technical, paramedical and other services prescribed for the purposes of this subsection.

(6) If the person is not being detained at such a place, an officer of Customs or police officer must:

(a) take the person to the nearest such place that the officer considers, on reasonable grounds, to be suitable for the recovery; and

(b) continue the person's detention at that place.

Subdivision D—Detention generally

Detention officers

219ZA. (1) The CEO may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision A.

(2) The CEO may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision B.

(3) The CEO may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision C.

Detention places

219ZB. (1) A place that is:

(a) prescribed for the purposes of this subsection; or

(b) provided with amenities that satisfy standards prescribed for the purposes of this subsection;

is a detention place for the purposes of Subdivision B.

(2) A place that is:

(a) prescribed for the purposes of this subsection; or

(b) provided with amenities that satisfy standards prescribed for the purposes of this subsection;

is a detention place for the purposes of Subdivision C.

Detention under this Division

219ZC. (1) An officer of Customs or police officer exercising powers under this Division in relation to a person must produce identification as such an officer when requested by the person to do so.

(2) An officer of Customs or police officer exercising powers under this Division in relation to a person must not use more force, or subject the person to greater indignity, than is reasonable and necessary.

(3) While a person is being taken to a particular place under this Division (except under subsection 219ZE (3)) the person is regarded as being detained under this Division.

(4) While a person is being detained under this Division, the person is regarded as being in the custody of:

(a) if the person is being detained by an officer of Customs—the CEO; or

(b) if the person is being detained by a member of the Australian Federal Police—the Commissioner of Police; or

(c) if the person is being detained by a member of the Police Force of a State or Territory—the person who holds, in relation to that Police Force, the same office as the Commissioner of Police holds in relation to the Australian Federal Police.

Detainees not fluent in English

219ZD. (1) Where an officer of Customs or police officer detaining a person under this Division has reasonable cause to believe that the person is unable, because of inadequate knowledge of the English language or for any other reason, to communicate orally with reasonable fluency in the English language, the officer must take all

reasonable steps to ensure that, at all times during the person's detention when communication with or by the person is to take place, a person competent to act as an interpreter is present and acts as interpreter for the purposes of the communication.

(2) Subsection (1) does not apply if the person detained and the person with whom he or she is communicating are able:

(a) to communicate in a language other than the English language with reasonable fluency; or

(b) to communicate satisfactorily by any other means.

Release from, or cessation of, detention

219ZE. (1) In spite of any other provision of this Division, but subject to subsection (2) and section 219ZG, where a person is detained under this Division and:

(a) an order is made under this Division that the person be released; or

(b) an order for the detention of the person is revoked; or

(c) an order for the detention of the person has ended and subsection 219V (5) does not apply; or

(d) if the detention is under Subdivision B—no detention officer suspects on reasonable grounds that the person is unlawfully carrying prohibited goods; or

(e) if the detention is under Subdivision C—no detention officer suspects on reasonable grounds that the person is internally concealing a suspicious substance; or

(f) an internal search of the person is completed;

the detention, and any search, of the person under this Division must cease immediately.

(2) Subsection (1) does not prevent a further application of this Division, or the detention of the person under any law other than this Division.

(3) If:

(a) the detainee is released at any place other than the place at which he or she was first detained; and

(b) the detainee so requests;

the detainee must immediately be returned free of charge to the place of the first detention.

Subdivision E—Medical practitioners

Conduct of internal search

219ZF. (1) Subject to subsection (2), a medical practitioner may, in carrying out an internal search of a detainee under section 219Z, use any medical procedure or apparatus that the medical practitioner considers to be reasonably safe in the circumstances.

(2) The medical practitioner must not use any medical procedure involving surgical incision unless he or she considers it necessary to do so because the detainee's life is at risk.

(3) If the medical practitioner:

(a) suspects on reasonable grounds during the internal search that the detainee is internally concealing a substance or thing; and

(b) lacks sufficient expertise to recover it;

he or she must, as soon as practicable, arrange for another medical practitioner having that expertise to do so.

Medical practitioner may take action to preserve detainee's life

219ZG. (1) A medical practitioner may take such measures in relation to a detainee, including removal to another place, as the medical practitioner considers necessary because the detainee's life is at risk, including measures involving surgical incision or exploration.

(2) While the detainee is being so removed to a place, and while he or she is at that place:

(a) he or she may be detained under this subsection; and

(b) time is not to be taken to run under an order made under Subdivision C.

Medical practitioner to answer questions and prepare report

219ZH. (1) Subject to subsection (4), at any time during the period during which a medical practitioner is involved in doing anything under this Division, an officer of Customs or police officer may ask the medical practitioner questions relating to whether an internal search of the detainee should be carried out, the manner in which such a search is being carried out or the results of such a search, and the medical practitioner must answer those questions to the best of his or her ability.

(2) As soon as practicable after completing anything done under this Division, the medical practitioner or medical practitioners involved must give to the chief officer of the person who detained the detainee a written report under subsection (3).

(3) The report is to be in accordance with directions given by the chief officer concerned.

(4) Subsections (1), (2) and (3) are not limited by any law relating to privilege or confidentiality.

(5) A report prepared under subsection (3) and given to a chief officer under subsection (2) is, in any proceedings under this Act, *prima facie* evidence of the facts stated in the report.

(6) In this section:

"chief officer" means:

(a) in relation to an officer of Customs—the CEO; or

(b) in relation to a member of the Australian Federal Police—the Commissioner of Police; or

(c) in relation to a member of the Police Force of a State or Territory—the person who holds, in relation to that Police Force, the same office as the Commissioner of Police holds in relation to the Australian Federal Police.

Proceedings against medical practitioners

219ZJ. Proceedings, other than proceedings concerning negligently causing injury, do not lie against a medical practitioner, or any person assisting or providing facilities to a medical practitioner, in respect of anything done by the medical practitioner under this Division.

Division 1C—Judges and Magistrates

Nature of functions of Judge or Magistrate

219ZK. (1) Where this Part confers on a Judge or Magistrate the function of issuing a warrant or giving an order, the function is so conferred on the Judge or Magistrate in a personal capacity and not as a court or a member of a court.

(2) Without limiting the generality of subsection (1), a warrant or order issued or given by a Judge or Magistrate under this Part has effect only by virtue of this Act and is not to be taken by implication to be issued or given by a court.

Protection of Judge or Magistrate

219ZL. (1) A Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory or of the Family Court of Australia has, in performing a function of, or connected with, issuing a warrant or giving an order under this Part, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

(2) A Judge of the Supreme Court of a State, or a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in subsection (1), has, in performing a function of, or connected with, issuing a warrant or giving an order under this Part, the same protection and immunity as if he or she were performing that function as that Supreme Court or as a member of that Supreme Court.

(3) A Magistrate performing a function of, or connected with, issuing a warrant or giving an order under this Part has the same protection and immunity as if he or she were performing that function as a Magistrates Court or as a member of a Magistrates Court.

Division 2—Protection to Officers

Reasonable cause for seizure a bar to action

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

221. No proceedings 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 plantiff 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

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.

Time for commencing action

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.

(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:

(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.

Security may be required

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.

PART XIII—PENAL PROVISIONS

Division 1—Forfeitures

Forfeited ships and aircraft

228. (1) The following ships or boats not exceeding 80 metres in overall length and the following aircraft shall be forfeited to the Crown:

(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 the master of which has refused to permit his ship to be boarded following a request properly made of him under subsection 59 (1) or (2).

(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 80 metres in overall length which would be forfeited if the ship were less than 80 metres in overall length shall be liable to a penalty not exceeding $100,000, and the ship may be detained until the penalty is paid or until security is given for its payment.

(2) For the purposes of this section, the overall length of a ship shall be ascertained by measuring the distance between:

(a) a vertical line passing through a point, being the foremost part of the stem; and

(b) a vertical line passing through a point, being the aftermost part of the stern.

Forfeited resources installations

228A. Any overseas resources installation that becomes attached to the Australian seabed without the permission of the CEO given under subsection 5A (2) shall be forfeited to the Crown.

Forfeited sea installations

228B. Any overseas sea installation that becomes installed in a coastal area without the permission of the CEO given under subsection 5B (2) shall be forfeited to the Crown.

Forfeited goods

229. (1) The following goods shall be forfeited to the Crown:

(a) All goods (not being objects forfeited, or liable to forfeiture, under the *Protection of Movable Cultural Heritage Act 1986*) 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 206 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 cargo report made under section 64AB 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.

(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.

(1A) In spite of subsection (1), goods are not forfeited to the Crown merely because they are imported or exported in contravention of the *Motor Vehicle Standards Act 1989*.

(2) Notwithstanding section 228, this section applies in relation to ships, boats and aircraft as well as other goods.

(3) In spite of subsection (1), goods are not forfeited to the Crown merely because they are imported or exported in contravention of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

Proceeds of drug trafficking liable to forfeiture

229A.[2] **(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;

"moneys" means moneys in the form of cash.

(2) This section applies to:

(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;

(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 subsection (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 subsection (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 under a seizure warrant, 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 a seizure warrant, 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 subsection (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 subsection (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.

Forfeited packages and goods

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

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.

(2) This section, in so far as it relates to prohibited imports, shall apply to all prohibited imports that are narcotic goods.

(3) An offence against this section to which paragraph (1) (d) applies is punishable upon summary conviction.

Collusive seizures—penalty

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;

Bribe offered to officer—penalty

(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;

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.

Rescuing goods and assaulting officers

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;

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.

Smuggling and unlawful importation and exportation

233. **(1)** A person shall not:

(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.

(1AA) A person who contravenes subsection (1) is guilty of an offence punishable upon conviction:

(a) in the case of an offence against paragraph (1) (a) or an offence against paragraph (1) (d) in relation to smuggled goods—as provided by subsection 233AB (1); or

(b) in any other case—as provided by subsection 233AB (2).

(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.

(5) This section does not apply to, or in relation to, narcotic goods.

Master not to use or allow use of ship for smuggling

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 subsection (1) is guilty of an offence punishable upon conviction:

(a) in the case of an offence committed in relation to goods that are narcotic goods—as provided by section 235;

(b) in the case of an offence committed in relation to the smuggling of goods that are not narcotic goods—as provided by subsection 233AB (1); or

(c) in any other case—as provided by subsection 233AB (2).

Penalties for offences against sections 233 and 233A

233AB. (1) Where an offence is punishable as provided by this subsection, the penalty applicable to the offence is:

(a) where the Court can determine the amount of the duty that would have been payable on the smuggled goods to which the offence relates if those goods had been entered for home consumption on:

(i) where the date on which the offence was committed is known to the Court—that date; or

(ii) where that date is not known to the Court—the date on which the prosecution for the offence was instituted;

a penalty not exceeding 5 times the amount of that duty and not less than 2 times that amount; or

(b) where the Court cannot determine the amount of that duty, a penalty not exceeding $50,000.

(2) Where an offence is punishable as provided by this subsection, the penalty applicable to the offence is:

(a) where the Court can determine the value of the goods to which the offence relates, a penalty not exceeding:

(i) 3 times the value of those goods; or

(ii) $50,000;

whichever is the greater; or

(b) where the Court cannot determine the value of those goods—a penalty not exceeding $50,000.

Special provisions with respect to narcotic goods

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

(aa) without reasonable excuse (proof whereof shall lie upon the person) brings, attempts to bring, or causes to be brought, into Australia any prohibited imports to which this section applies;

(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

(caa) without reasonable excuse (proof whereof shall lie upon him) conveys, or attempts to convey, 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, bring, or cause to be brought, 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, or bringing, 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

(e) fails to disclose to an officer on demand any knowledge in his possession or power concerning the importation or intended importation, or bringing or intended bringing, 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 subsection, being an offence to which paragraph (c) of that subsection 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.

(1B) On the prosecution of a person for an offence against subsection (1), being an offence to which paragraph (ca) of that subsection 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.

(1C) Any defence for which provision is made under either of the last 2 preceding subsections in relation to an offence does not limit any defence otherwise available to the person charged.

(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.

(3) A person who is guilty of an offence against subsection (1) of this section is punishable upon conviction as provided by section 235.

(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.

Evidence of Analyst

233BA. (1) The CEO may appoint a person to be an analyst for the purposes of this Act.

(2) Subject to subsection (4), in any proceedings for an offence against section 233B, a certificate of an analyst in an approved form stating, in respect of a substance in relation to which the offence is alleged to have been committed:

(a) that the analyst signing the certificate is appointed under subsection (1); and

(b) when and from whom the substance was received; and

(c) what, if any, labels or other means of identifying the substance accompanied it when it was received; and

(d) what container or containers the substance was contained in when it was received; and

(e) a description, and the weight, of the substance received; and

(f) when the substance, or a portion of it, was analysed; and

(g) a description of the method of analysis; and

(h) the results of the analysis; and

(j) how the substance was dealt with after handling by the analyst, including details of:

(i) the quantity retained; and

(ii) the name of the person, if any, to whom any retained quantity was given; and

(iii) measures taken to secure any retained quantity;

is admissible as *prima facie* evidence of the matters in the certificate and of the correctness of the result of the analysis.

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(4) A certificate shall not be admitted in evidence under subsection (2) in proceedings for an offence unless the person charged with the offence or a solicitor who has appeared for the person in those proceedings has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

(5) Subject to subsection (6), where, under subsection (2), a certificate of an analyst is admitted in evidence in a proceeding for an offence, the person charged with the offence may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he or she had given evidence of the matters stated in the certificate.

(6) Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless:

(a) the prosecutor has been given at least 4 days notice of the person's intention to require the analyst to be so called; or

(b) the Court, by order, allows the person to require the analyst to be so called.

Customs offences

234. (1) A person shall not:

(a) Evade payment of any duty which is payable;

(b) Obtain any drawback, refund, rebate or remission which is not payable;

(d) knowingly or recklessly:

(i) make a statement to an officer that is false or misleading in a material particular; or

(ii) omit from a statement made to an officer any matter or thing without which the statement is misleading in a material particular;

(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.

(2) A person who contravenes subsection (1) is guilty of an offence punishable upon conviction:

(a) in the case of an offence against paragraph (1) (a), by:

(i) where the Court can determine the amount of the duty on goods the payment of which would have been evaded by the commission of the offence if the goods had been entered for home consumption on:

(A) where the date on which the offence was committed is known to the Court—that date; or

(B) where that date is not known to the Court—the date on which prosecution for the offence was instituted;

a penalty not exceeding 5 times the amount of that duty and not less than 2 times that amount; or

(ii) where the Court cannot determine the amount of that duty, a penalty not exceeding $50,000;

(b) in the case of an offence against paragraph (1) (b), by a penalty not exceeding 5 times the amount of drawback, refund, rebate or remission that was obtained by the commission of the offence and not less than 2 times that amount;

(c) subject to subsection (3), in the case of an offence against paragraph (1) (d), by a penalty not exceeding $5,000; or

(d) in the case of an offence against paragraph (1) (g) or (h), by a penalty not exceeding $1,000.

(2A) Where an export entry, a submanifest, an outward manifest or a withdrawal of such an entry, submanifest or manifest is taken, under subsection 119D (3), to have been communicated to Customs, then, for the purposes of paragraph (1) (d), the part of the communication constituting the transmission to Customs is treated as a statement made to the CEO.

(2B) Where an import entry, a withdrawal of such an entry, or a return for the purposes of subsection 69 (5), 70 (7) or 77D (5) is taken, under section 71L, to have been communicated to Customs, then, for the purposes of paragraph (1) (d), the part of the communication constituting the transmission to Customs is treated as a statement made to the CEO.

(2C) Nothing in subsection (2A) or (2B) is to be taken to affect the operation of any of the provisions of section 183.

(3) Where a person is convicted of an offence against paragraph (1) (d) in relation to a statement made, or an omission from a statement made, in respect of the amount of duty payable on particular

goods, a Court may, in relation to that offence, impose a penalty not exceeding the sum of $5,000 and twice the amount of the duty payable on those goods.

Places set aside for purposes of Act

234AA. (1) 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.

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

Unauthorised entry to places and on ships, aircraft or wharves

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 subsection 234AA (1); or

(b) enter on or be in or on:

(i) a ship;

(ii) an aircraft;

(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: $1,000.

(2) The last preceding subsection 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.

(3) In any proceedings for the prosecution of a person for an offence against subsection (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 subsection 234AA (1).

Unauthorised use of cameras and sound recorders

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

(a) not to operate a camera, or use an appliance to record or transmit sound, at a place in relation to which a sign is displayed under subsection 234AA (2); or

(b) not to operate a camera, or use an appliance to record or transmit sound, at a place (being a place that is part of a ship, of an aircraft or of a wharf) at a time when the personal baggage of passengers disembarking from, or embarking on, a ship or aircraft, is being examined, for the purposes of this Act, at or in the vicinity of that place.

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

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

Penalty: $1,000.

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

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

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

Security of identifying codes and PIN numbers

234AC. (1) A registered EXIT user must:

(a) take all reasonable steps, in accordance with the applicable EXIT agreement, to safeguard the security of the identifying code allocated to the user; and

(b) notify Customs, at the earliest available opportunity, if the user is aware that the identifying code is, or is likely to be known to any person other than a person to whom the user has made the code available in circumstances contemplated under the applicable EXIT agreement.

(2) A registered COMPILE user must:

(a) take all reasonable steps, in accordance with the applicable COMPILE user agreement, to safeguard the security of the PIN number or PIN numbers allocated to the user; and

(b) notify Customs, at the earliest available opportunity, if the user is aware that a PIN number allocated to the user is, or is likely to be, known to any person other than the person to whom the user has made the number available in circumstances contemplated under the applicable COMPILE user agreement.

(3) A registered user of a cargo automation system must:

(a) take all reasonable steps, in accordance with the user agreement applicable to that cargo automation system, to safeguard the security of the identifying code allocated to the user; and

(b) notify Customs, at the earliest available opportunity, if the user is aware that the identifying code allocated to the user is, or is likely to be, known to any person other than an employee of the user.

Penalty: $5,000.

Penalties for offences in relation to narcotic goods

235. (1) Where:

(a) a person commits an offence against subsection 50 (4) or subsection 112 (2B); and

(b) the offence is an offence that is punishable as provided by this section;

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 subsections (3) and (7), where:

(a) a person commits an offence against subsection 231 (1), section 233A or subsection 233B (1); and

(b) the offence is an offence that is punishable as provided by this section;

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:

(A) are a narcotic substance in respect of which there is a commercial quantity applicable; and

(B) consist of a quantity of that substance that is not less than that commercial quantity; 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 trafficable 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 trafficable 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 trafficable quantity applicable to the substance but is not satisfied as provided in paragraph (c):

(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 subsection (2) was committed consist of a quantity of a narcotic substance that is not less than the trafficable quantity applicable to that substance, but is not satisfied as provided in paragraph (c) of that subsection 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 subsection, the penalty punishable for the offence is the penalty specified in paragraph (e) of that subsection.

(4) An offence referred to in subsection (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 subsection (4) renders an offender liable to be punished more than once for the same offence.

(6) Where proceedings for an offence referred to in subsection (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 subsection (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 subsections (2) and (3), the narcotic substance of which narcotic goods in relation to which an offence has been 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.

Aiders and abettors

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.

Attempts

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.

Penalties in addition to forfeitures

239. All penalties shall be in addition to any forfeiture.

Commercial documents to be kept

240. **(1)** A person who is the owner of goods imported into Australia shall keep all the relevant commercial documents relating to the goods that came into that person's possession or control before, or come into that person's possession or control on or after, the entry of those goods for any purpose, being documents that are necessary to enable a Collector to enable a Collector to satisfy himself or herself of the correctness of the particulars shown in the entry until:

(a) if the goods are not ultimately entered for home consumption—the goods cease to be subject to the control of Customs; and

(b) if the goods are entered, or ultimately entered, for home consumption—the expiration of the period of 5 years after the goods are so entered.

Penalty: $2,000.

(1AA) A person who is the owner of goods imported into Australia must keep all the relevant commercial documents relating to the goods:

(a) that come into the person's possession or control before, or come into the person's possession or control on or after, a return is given to Customs under section 69, 70 or 77D in relation to those goods; and

(b) that are necessary to enable a Collector to satisfy himself or herself of the correctness of the particulars shown in the return;

until the end of the period of 5 years after the giving of the return.

Penalty: 20 penalty units.

(1A) A person who is the owner of goods exported from Australia must keep all the relevant commercial documents relating to the goods that come into that persons possession or control before, or come into that persons possession or control on or after, the entry of those goods for export, being documents that are necessary to enable a Collector to satisfy himself or herself of the correctness of the particulars shown in the entry, until the expiration of the period of 5 years after the goods are so entered.

Penalty: $2000.

(2) Where, in accordance with the requirement of any law of the Commonwealth or of a State or Territory or with ordinary commercial practice a document that would, but for this subsection, be required to be kept in accordance with subsection (1), (1AA) or (1A), is required by that law or practice to be surrendered to another person, this section shall be taken to be complied with if, at all times after the document is so surrendered and during the period that the document would have been required to be kept, a true copy of the document, certified in accordance with subsection (3), is kept in its stead.

(3) Where a person is required to surrender a commercial document referred to in subsection (1), (1AA) or (1A) to another person for a reason set out in subsection (2), the first-mentioned person may make a true copy of the document and, if the first-mentioned person does so, and attaches to the copy a certificate, signed by the first-mentioned person:

(a) to the effect:

(i) that the copy is a true copy of the original document; and

(ii) that the original document has been surrendered to that other person for that reason; and

(b) providing particulars of the reason referred to in subparagraph (a) (ii);

the certified copy shall be treated by the CEO or a Collector, and shall be admissible in all courts, as if it were the original document.

(4) A person who is required by subsection (1), (1AA) or (1A) to keep commercial documents relating to particular goods:

(a) shall keep the documents in such a manner as will enable a Collector readily to ascertain whether the goods have been properly described for the purpose of importation or exportation, as the case requires, and, in the case of goods entered for home consumption, properly valued or rated for duty;

(b) shall, on request, in writing, by a Collector, inform the Collector as to the whereabouts of the documents; and

(c) subject to subsection (5), shall not alter or deface any commercial document required to be so kept.

Penalty: $2,000.

(5) Nothing in paragraph (4) (c) shall be taken to prohibit the notation or marking of a document in accordance with ordinary commercial practice.

(6) Where:

(a) a person is convicted of an offence against subsection (1), (1AA), (1A) or (4); and

(b) the court before which the person is convicted is satisfied that the person has previously been convicted of a records offence;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding $5,000.

(7) This section shall not require the keeping of any commercial documents:

(a) by a company that has gone into liquidation and that has been dissolved;

(b) by a class of persons that is declared by the regulations to be a class to which this section does not apply; or

(c) of a kind declared by the regulations to be commercial documents to which this section does not apply.

Rebate documents to be kept

240A. (1) A person who applies for rebate in respect of diesel fuel under subsection 164 (1) (in this section called the **"applicant"**) must keep all relevant rebate documents:

(a) that came into the applicant's possession before the application is made; or

(b) that come into the applicant's possession after the application is made;

until the expiration of the period of 5 years after the application is made.

Penalty: $2,000.

(2) For the purposes of subsection (1), a document is a relevant rebate document if it is necessary to enable a Collector to ascertain:

(a) the quantity of diesel fuel that was purchased by the applicant for use in a manner referred to in subsection 164 (1); or

(b) the manner in which the applicant used the fuel in respect of which the application for rebate is made.

(3) If:

(a) an applicant is required, under subsection (1), to keep a document; and

(b) the applicant is required by any law of the Commonwealth or of a State or Territory, or in accordance with ordinary commercial practice to give the document to another person;

the requirements of this section are taken to be complied with if, after surrendering the document and for the period that the document would have been required to be kept, the applicant keeps, instead of the document, a true copy certified in accordance with subsection (4).

(4) If an applicant is required to surrender a document referred to in subsection (1) for a reason set out in subsection (3), the applicant may:

(a) make a true copy of the document; and

(b) attach to the copy a certificate, signed by the applicant:

(i) stating that the copy is a true copy of the original document; and

(ii) stating that the original document has been surrendered to another person for a reason set out in subsection (3); and

(iii) providing particulars of that reason.

(5) If an applicant makes a true copy and certifies the copy in accordance with subsection (4), the copy must be treated by the CEO or a Collector and is admissible in all courts as if it were the original document.

(6) An applicant who is required by subsection (1) to keep documents:

(a) must keep the documents in a manner that enables a Collector readily to ascertain:

(i) the quantity of diesel fuel that was purchased by the applicant for use in a manner referred to in subsection 164 (1); and

(ii) the manner in which the applicant used the fuel in respect of which the application for rebate is made; and

(b) must, if the Collector requests the applicant in writing to do so, inform the Collector of the location of the documents; and

(c) must not alter any document required to be so kept.

Penalty: $2,000.

(7) Nothing in paragraph (6) (c) is to be taken to prohibit the marking of a document in accordance with ordinary commercial practice.

(8) This section does not require the keeping of any documents:

(a) by a company that has gone into liquidation and that has been dissolved; or

(b) by a class of persons that is declared by the regulations to be a class to which this section does not apply; or

(c) of a kind declared by the regulations to be documents to which this section does not apply.

Persons not to be subject to prosecution under sections 240 and 240A

240B. Proceedings may be brought against a person in respect of a failure to keep a document under either section 240 or section 240A, but not both.

Customs records of computer transmissions admissible in evidence

241. (1) Customs must keep a record of all transmissions made to or by it:

(a) under the COMPILE computer system relating to an import entry or a withdrawal of such an entry; or

(b) under the EXIT computer system relating to an export entry, a submanifest, a manifest or a withdrawal of such an entry, submanifest or manifest;

for a period of 5 years after the transmission is communicated to, or by, Customs.

(2) In any proceedings under this Act, the record retained by Customs under this section:

(a) is admissible in evidence; and

(b) is *prima facie* evidence:

(i) if it purports to be a record of a transmission made to Customs—that the person whose PIN number or identifying code was used for the purpose of the transmission made the statements contained in the transmission; and

(ii) if it purports to be a record of a transmission made by Customs—that Customs made the statements contained in the transmission.

Division 3—Recovery of Pecuniary Penalties for Dealings in Narcotic Goods

Interpretation

243A. (1) In this Division, unless the contrary intention appears:

"benefit" includes service or advantage;

"cheque" includes a bill, promissory note or other security for money;

"Court" means the Federal Court of Australia;

"dealing", in relation to property of a person, includes:

(a) if a debt is owed to that person—making a payment to any person in reduction of the amount of the debt;

(b) removing the property from Australia; and

(c) receiving or making a gift of the property;

"effective control", in relation to property, or an interest in property, has the meaning given by section 243AB;

"interest", in relation to property, means:

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property;

whether present or future and whether vested or contingent;

"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;

"penalty amount", in relation to an order under section 243B against a person, means the amount that the person is liable to pay the Commonwealth under the order;

"petition" means a petition under the *Bankruptcy Act 1966*;

"police officer" means:

(a) a member or special member of the Australian Federal Police; or

(b) a member of the police force of a State or Territory;

"property" means real or personal property of every description, whether situated in Australia or elsewhere and whether tangible or intangible and includes an interest in any such real or personal property;

"restraining order" means an order made under paragraph 243E (2) (c);

"trustee in bankruptcy" means:

(a) in relation to a bankruptcy—the trustee of the estate of the bankrupt;

(b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement;

(c) in relation to a deed of assignment, a deed of arrangement or a composition under Part X of the *Bankruptcy Act 1966*—the trustee of the deed or the composition; or

(d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate;

"Trust Fund" means the Confiscated Assets Trust Fund established by the *Proceeds of Crime Act 1987*.

(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 subsection (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 a benefit derived by a person includes a reference to:

(a) a benefit derived, directly or indirectly, by the person; and

(b) a benefit derived, directly or indirectly, by another person at the request or direction of the first person.

(4A) A reference in this Division to the property of a person includes a reference to property in respect of which the person has a beneficial interest.

(5) Where, upon application being made to the Court under subsection 243E (1) and supported by an affidavit made by a police officer or an officer of Customs stating that he believes that any property is the property of a person, the Court makes a restraining order against 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.

(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 subsection (1) of that section.

Effective control of property

243AB. (1) Property, or an interest in property, may be subject to the effective control of a person within the meaning of this Division whether or not the person has:

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property.

(2) Without limiting the generality of any other provision of this Division, in determining:

(a) whether or not property, or an interest in property, is subject to the effective control of a person; or

(b) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of a person;

regard may be had to:

(c) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;

(d) a trust that has a relationship to the property; and

(e) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (c) or trusts of the kind referred to in paragraph (d), and other persons.

Pecuniary penalties

243B. (1) Subject to subsection (7), the Minister, the Commissioner of Police, the CEO or the Director of Public Prosecutions 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:

(a) a particular prescribed narcotics dealing engaged in by him; or

(b) prescribed narcotics dealings engaged in by him during a particular period.

(2) If, in a proceeding instituted under subsection (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.

(3) The Court may order a person to pay a pecuniary penalty under subsection (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 subsection (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 subsection (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 subsection (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.

Assessment of pecuniary penalty

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;

(e) the value of the defendant's property before, during and after he engaged in that dealing, or before, during and after that period, as the case may be; and

(f) the defendant's income and expenditure before, during and after he or she engaged in that dealing, or before, during and after 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 during or after the defendant engaged in a particular prescribed narcotics dealing, or during, 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 subsection (2) of that section, the Court shall, subject to subsection (4), treat the value of benefits derived by the defendant by reasons of his having engaged in that dealing or in prescribed narcotics dealings during that period as being not less than the amount of the greatest excess.

(4) Where, after evidence has been given in a proceeding under section 243B that the value of the defendant's property during or after the defendant engaged in a particular prescribed narcotics dealing, or during, 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—subsection (3) does not apply to the excess; or

(b) if the defendant so satisfies the Court in respect of a part of the excess—subsection (3) applies to and in relation to the excess as if it were reduced by the amount of that part.

(5) In a proceeding under section 243B, a police officer 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.

(7) The Court, in quantifying the value of a benefit for the purposes of this section, may treat as the value of the benefit the value that the benefit would have had if derived at the time when the valuation is being made and, without limiting this, may have regard to any decline in the purchasing power of money between the time when the benefit was derived and the time when the valuation is being made.

(8) For the purposes of this section, where property of a person vests in a trustee in bankruptcy, the property shall be taken to continue to be the property of the person.

Court may lift corporate veil etc.

243CA. **(1)** Where the Court is assessing the value of benefits derived by a person (in this section called **"the defendant"**) because of engaging in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, the Court may treat as property of the defendant any property that, in the opinion of the Court, is subject to the effective control of the defendant.

(2) Where the Court makes, or has made, an order (in this section called **"a pecuniary penalty order"**) that the defendant pay a pecuniary penalty under section 243B, the Court may:

(a) on application by the Minister, the Commissioner of Police, the CEO or the Director of Public Prosecutions; and

(b) if the Court is of the opinion that particular property is subject to the effective control of the defendant;

make an order declaring that the whole, or a specified part, of that property is available to satisfy the pecuniary penalty order.

(3) Where the Court declares that property is available to satisfy a pecuniary penalty order:

(a) the order may be enforced against the property as if it were the defendant's; and

(b) a restraining order may be made in respect of the property as if it were the defendant's property.

(4) Where the Minister, the Commissioner of Police, the CEO or the Director of Public Prosecutions makes an application for an order under subsection (2) that property is available to satisfy a pecuniary penalty order against the defendant:

(a) the person (in this paragraph called **"the applicant"**) who makes the application shall give written notice of the application to the defendant and to any person who the applicant has reason to believe may have an interest in the property; and

(b) the defendant and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

Presumption of illegality of importation

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 make restraining order against property

243E. (1) Where the Minister, the Commissioner of Police, the CEO or the Director of Public Prosecutions 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, the CEO or the Director of Public Prosecutions may make application to the Court, *ex parte*, for an order under paragraph (2) (c) against one or more of the following:

(a) specified property of the defendant;

(b) all the property of the defendant (including property acquired after the making of the order);

(d) all the property of the defendant (including property acquired after the making of the order) other than specified property;

(e) specified property of a person other than the defendant.

(1A) The application under subsection (1) may be made:

(a) where the Court makes the order under section 243B—at any time before the liability of the defendant in respect of the pecuniary penalty has been discharged; or

(b) in any other case—at any time before the proceeding under section 243B is finally disposed of.

(2) Where:

(a) an application under subsection (1) is supported by:

(i) an affidavit of a police officer or an officer of Customs stating that he believes that:

(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 against specified property of the defendant—an affidavit of a police officer or an officer of Customs stating that he or she believes that the property is the property of the defendant and setting out the grounds on which he or she 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, subject to subsection (2A), make an order:

(i) directing that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the order; and

(ii) if the Court is satisfied that the circumstances so require—direct the Official Trustee to take custody and control of the property, or such part of the property as is specified in the order; and

(d) may, subject to subsection (3), include in the order such provision (if any) in relation to the operation of the order as the Court thinks fit.

(2A) Where an application under subsection (1) seeks an order under paragraph (2) (c) against specified property of a person other than the defendant, the Court shall not make the order unless:

(a) the application is supported by an affidavit of a police officer or an officer of Customs stating that the officer believes that the property is subject to the effective control of the defendant; and

(b) the Court considers that, having regard to the matters contained in that affidavit, there are reasonable grounds for holding that belief.

(3) Paragraph (2) (d) does not authorize the Court to include in the order a provision postponing the operation of the order.

(4) Without limiting the power of the Court under paragraph (2) (d), the order against property:

(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.

(4A) The Court shall not make provision of the kind referred to in paragraph (4) (c) unless it is satisfied that the defendant cannot meet the expenses concerned out of property that is not subject to the order.

(5) The Court may refuse to make the order 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.

(6) For the purposes of an application under subsection (1), the Minister, the Commissioner of Police, the CEO or the Director of Public Prosecutions 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.

(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 subsection (2) shall not be paid into the Common Investment Fund established in pursuance of section 20B of that Act.

(8) Where the Official Trustee is given a direction under subparagraph (2) (c) (ii) in relation to property, the Official Trustee may do anything that is reasonably necessary for the purpose of preserving the property including, without limiting the generality of this:

(a) becoming a party to any civil proceedings affecting the property;

(b) ensuring that the property is insured;

(c) if the property consists, wholly or partly, of securities or investments—realising or otherwise dealing with the securities or investments; and

(d) if the property consists, wholly or partly, of a business:

(i) employing, or terminating the employment of, persons in the business; and

(ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis.

(9) Where the Official Trustee is given a direction under subparagraph (2) (c) (ii) in relation to shares in a company, the Official Trustee is entitled:

(a) to exercise the rights attaching to the shares as if it were the registered holder of the shares; and

(b) to do so to the exclusion of the registered holder.

(10) Neither paragraph (8) (c) nor subsection (9) limits the generality of the other.

(11) In proceedings dealing with an application for an order under paragraph (2) (c), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

Court may make further orders

243F. (1AA) In this section:

"defendant" has the same meaning as in section 243E.

(1) Where the Court makes, or has made, a restraining order (in this section called the **"original order"**) against property of a person (in this section called the **"owner"**), 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 243E (2) (d);

(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 owner, 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:

(i) the owner; or

(ii) if the owner is not the defendant—the defendant; or

(iii) if the owner or the defendant is a body corporate—a director of the body corporate specified by the Court;

to give to the Minister, the Commissioner of Police, the CEO, the Director of Public Prosecutions or the Official Trustee, within a period specified in the order, a statement verified by the oath of the person making the statement, setting out such particulars of the property, or dealings with the property, of the owner or defendant as the Court thinks proper;

(e) for the examination on oath before the Court or Registrar of the Court of any person, including:

(i) the owner; or

(ii) the defendant;

about the affairs (including the nature and location of any property) of:

(iii) anyone else who is either the owner or the defendant, or both; and

(iv) if the person to be examined is either the owner or defendant, or both—that person;

(ea) directing the owner or another person to do any act or thing necessary or convenient to be done to enable the Official Trustee to take custody and control of the property in accordance with the original order; 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.

(2) An application for an order under subsection (1) may be made:

(a) by the Official Trustee;

(b) by the Minister, the Commissioner of Police, the CEO or the Director of Public Prosecutions;

(c) by the owner; or

(d) with the leave of the Court, by any other person.

(2A) Where:

(a) the Court made the original order against the property in reliance on the engaging by a person (in this subsection called the **"defendant"**) in a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and

(b) another person having an interest in the property applies to the Court for a variation of the order to exclude the interest from the order;

the Court shall grant the application if satisfied that the interest is not subject to the effective control of the defendant.

(3) Where:

(a) a person is examined before the Court, or the Registrar of the Court, under an order made under subsection (1); or

(b) an order made under subsection (1) directs a person to furnish a statement to the Minister, the Commissioner of Police, the CEO, the Director of Public Prosecutions or the Official Trustee;

the person is not excused from:

(c) answering a question when required to do so by the Court, or by the Registrar of the Court; or

(d) furnishing the statement, or setting out particulars in the statement;

as the case may be, on the ground that the answer to the question, or the statement or particulars, might tend to incriminate the person or make the person liable to a forfeiture or penalty.

(3A) Where a person:

(a) is examined before the Court, or the Registrar of the Court; or

(b) furnishes a statement to the Minister, the Commissioner of Police, the CEO, the Director of Public Prosecutions or the Official Trustee;

under an order made under subsection (1), then:

(c) a statement or disclosure made by the person in answer to a question put in the course of the examination; or

(d) the statement so furnished;

as the case may be, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure referred to in paragraph (c), or of the statement referred to in paragraph (d), is not admissible against the person in any civil or criminal proceeding except:

(e) a proceeding for giving false testimony in the course of the examination, or in respect of the falsity of the statement, as the case may be; or

(f) 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.

(5) In proceedings dealing with an application for an order under subsection (1), a witness is not required to answer a question or to produce a document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

Official Trustee to discharge pecuniary penalty

243G. (1) Where:

(a) the Court makes an order under section 243B that a person pay a pecuniary penalty in relation to a particular prescribed narcotics dealing or in relation to prescribed narcotics dealings during a particular period; and

(b) at the time when the order is made, property is subject to a restraining order made, in reliance on the prescribed narcotics dealing or prescribed narcotics dealings, against:

(i) property of the person; or

(ii) property of another person in relation to which an order under subsection 243CA (2) is made;

the Court may include in the order under section 243B a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

(2) Where:

(a) the Court makes an order under section 243B for a person to pay a pecuniary penalty in relation to a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and

(b) a restraining order is subsequently made against:

(i) property of the person; or

(ii) property of another person in relation to which an order under subsection 243CA (2) is made;

in reliance on the prescribed narcotics dealing or prescribed narcotics dealings;

the Court may include in the restraining order a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

(2A) If:

(a) the Court has made an order under section 243B that a person pay a pecuniary penalty in relation to a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and

(b) a restraining order is in force against:

(i) property of the person; or

(ii) property of another person in relation to which an order under subsection 243CA (2) is in force;

the Court may, on application by the Minister, the Commissioner of Police, the CEO or the Director of Public Prosecutions, direct the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of the property.

(3) For the purposes of enabling the Official Trustee to comply with a direction given by the Court under subsection (1), (2) or (2A), the Court may, in the order in which the direction is given or by a subsequent order:

(a) direct the Official Trustee to sell or otherwise dispose of such of the property that is subject to the restraining order as the Court specifies; and

(b) appoint an officer of the Court or any other person to execute any deed or instrument in the name of a person who owns or has an estate, interest or right in the property and to do any act or thing necessary to give validity and operation to the deed or instrument.

(4) The execution of the deed or instrument by the person appointed by an order under subsection (3) has the same force and validity as if the deed or instrument had been executed by the person who owned or had the estate, interest or right in the property.

(5) Where the Official Trustee is given a direction under subsection (1), (2) or (2A) in relation to property, the Official Trustee shall not:

(a) if the property is money—apply the money in accordance with subsection (6) until the end of the appeal period; and

(b) if the property is not money—sell or otherwise dispose of the property until the end of the appeal period.

(6) Where the Official Trustee is given a direction under subsection (1), (2) or (2A) in relation to property, the Official Trustee shall, as soon as practicable after the end of the appeal period:

(a) if the property is money:

(i) apply the money in payment of the costs, charges, expenses and remuneration, of the kind referred to in subsection 243P (1), incurred or payable in connection with the restraining order and payable to the Official Trustee under the regulations; and

(ii) subject to subsection (7), pay the remainder of the money to the Trust Fund as required by section 34B of the *Proceeds of Crime Act 1987*; and

(b) if the property is not money:

(i) sell or otherwise dispose of the property;

(ii) apply the proceeds of the sale or disposition in payment of the costs, charges, expenses and remuneration of the kind referred to in subsection 243P (1), incurred or payable in connection with the restraining order or the sale or disposition and payable to the Official Trustee under the regulations; and

(iii) subject to subsection (7), pay the remainder of those proceeds to the Trust Fund as required by section 34B of the *Proceeds of Crime Act 1987*.

(7) Where the money or proceeds to which subparagraph (6) (a) (ii) or (b) (iii) applies exceeds the penalty amount, the Official Trustee shall:

(a) pay to the Trust Fund as required by section 34B of the *Proceeds of Crime Act 1987* an amount equal to the penalty amount; and

(b) pay the balance to the person whose property was subject to the restraining order.

(8) Where the Official Trustee pays, in accordance with a direction under this section, money to the Trust Fund as required by section 34B of the *Proceeds of Crime Act 1987* in satisfaction of a person's liability under an order under section 243B, the person's liability under the order shall, to the extent of the payment be deemed to be discharged.

(9) Where:

(a) a restraining order is made against property in reliance on a particular prescribed narcotics dealing engaged in by the person or prescribed narcotics dealings engaged in by the person during a particular period; and

(b) before or after the restraining order is made, an order under section 243B has been or is made against the person in reliance on the prescribed narcotics dealing or prescribed narcotics dealings;

the appeal period in respect of the property is the period ending:

(c) if the period provided for the lodging of an appeal against the making of the order under section 243B has ended without such an appeal having been lodged—at the end of that period; or

(d) if an appeal against the making of the order under section 243B has been lodged—when the appeal lapses or is finally determined.

Revocation of order under section 243E

243H. (1) Where, after a restraining order 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 a restraining order that was made in relation to a proceeding for the recovery of a pecuniary penalty does not prevent the Court from making a further restraining order in relation to that proceeding.

(3) Without limiting the powers of the Court to make an order under subsection (1), the Court may revoke a restraining order upon the applicant:

(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 a restraining order, 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 restraining order related.

Pecuniary penalty a charge on property

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, a restraining order against property, 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.

(2) Where a charge is created by subsection (1) on any property of a person upon the making of a restraining order, the charge ceases to have effect in respect of the property:

(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 a direction of 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 subsection (1):

(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 subsection (2), is not affected by any change of ownership of the property.

(4) Where a charge is created by subsection (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 or the person who applied for the restraining order against that property may cause the charge so created to be registered under the provisions of that law and, if the Official Trustee or the person who applied for the restraining order, as the case may be, does so, a person who purchases or otherwise acquires the property after the registration of the charge shall, for the purposes of subsection (2), be deemed to have notice of the charge.

Contravention of restraining orders

243K. (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order is guilty of an offence.

Penalty: Imprisonment for 5 years.

(2) Where:

(a) a restraining order is made against property;

(b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order; and

(c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith;

the Minister, the Commissioner of Police, the CEO or the Director of Public Prosecutions may apply to the Court for an order that the disposition or dealing be set aside.

(3) Where an application is made under subsection (2) in relation to a disposition or dealing, the Court may make an order:

(a) setting the disposition or dealing aside as from the day on which it took place; or

(b) setting the disposition or dealing aside as from the day of the order under this subsection and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.

Sale of property before bankruptcy

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 a direction 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 direction, less the taxed costs of the Minister, the Commissioner of Police, the CEO or the Director of Public Prosecutions in respect of the making of the direction under section 243G.

(2) Where the Commonwealth has paid to the trustee in bankruptcy an amount in accordance with subsection (1), the Commonwealth may prove in the bankruptcy for its debt as an unsecured creditor as if the order under section 243G 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.

Duties of the Official Trustee after receiving notice of presentation of creditor's petition etc.

243M. (1) Where, after the Official Trustee has been directed under subsection 243G (1) or (2) 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:

(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 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 under subsection 243G (1) or (2) 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 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*.

Protection of Official Trustee from personal liability in certain cases

243N. (1) Where:

(a) the Court has made a restraining order directing the Official Trustee to take custody and control of property of a person;

(b) the Official Trustee has taken custody and 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);

the Official Trustee is not personally liable for any loss or damage arising from its having taken custody and 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 custody and control of the property.

(2) Where the Official Trustee has, in accordance with a restraining order, taken custody and 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 custody and 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 custody and control of the property.

(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 a restraining order to take custody and 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.

(4) Where the Official Trustee who has been directed by a restraining order to take custody and 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.

Indemnification of Official Trustee

243NA. (1) The Commonwealth is by force of this subsection liable to indemnify the Official Trustee against any personal liability (including any personal liability as to costs) incurred by it for any act done, or omitted to be done, by it in the exercise, or purported exercise, of its powers and duties under this Division.

(2) Nothing in subsection (1) affects:

(a) any right that the Official Trustee has, apart from that subsection, to be indemnified in respect of any personal liability referred to in that subsection; or

(b) any other indemnity given to the Official Trustee in respect of any such personal liability.

(3) Where the Commonwealth makes a payment in accordance with the indemnity referred to in subsection (1), the Commonwealth has the same right of reimbursement in respect of the payment

(including reimbursement under another indemnity given to the Official Trustee) as the Official Trustee would have if the Official Trustee had made the payment.

Indemnification of Official Receivers etc.

243NB. (1) The Commonwealth shall indemnify a person to whom this subsection applies against any liability incurred by the person:

(a) for any act done negligently, or negligently omitted to be done, by the person in the performance of the person's duties in relation to this Division; or

(b) for any act done by the person in good faith in the purported performance of the person's duties in relation to this Division.

(2) Subsection (1) applies to:

(a) persons who are Official Receivers under the *Bankruptcy Act 1966*;

(b) persons who perform any of the duties of such an Official Receiver in relation to this Division; or

(c) persons who assist such an Official Receiver in the performance of the Official Receiver's duties in relation to this Division.

Costs etc. payable to Official Trustee

243P. (1) The regulations may make provision for or in relation to:

(a) the costs, charges and expenses incurred in connection with; and

(b) the Official Trustee's remuneration in respect of;

the performance or exercise by the Official Trustee of functions, duties or powers under this Division.

(2) An amount equal to each amount of remuneration that the Official Trustee receives under the regulations shall be paid into the Consolidated Revenue Fund.

(3) Where there are no regulations in relation to a matter referred to in subsection (1):

(a) the regulations referred to in section 55 of the *Proceeds of Crime Act 1987* shall apply, so far as they are applicable, and with appropriate changes, in relation to the matter; and

(b) a reference in this Division (other than in this subsection) to regulations in relation to the matter shall be taken to be a reference to the regulations referred to in section 55 of the *Proceeds of Crime Act 1987*.

Notices

243Q. (1) Subject to subsection (2), where the Court makes a restraining order, or an order under section 243CA or 243F, against a person's property, the person who applied for the order (in this section called the **"applicant"**) shall give the person written notice of the order.

(2) Where:

(a) the Court makes a restraining order against a person's property; and

(b) the Court is satisfied that it would be in the public interest to delay giving notice of the order to the person;

the Court may order that giving the person notice of the order be delayed for such period as is specified in the order under this subsection and the applicant shall give the person notice of the restraining order as soon as practicable after the end of the period specified.

Reduction of pecuniary penalty

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:

(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.

Jurisdiction of the Court

243S. Jurisdiction is conferred on the Court to hear and determine applications under this Division.

Division 4—Penalty for making false statements etc.

Penalty for making false statements

243T. (1) Subject to section 243V, where:

(a) a person, whether knowingly, recklessly or otherwise:

(i) makes a statement to an officer that is false or misleading in a material particular; or

(ii) omits from a statement made to an officer any matter or thing without which the statement is misleading in a material particular; and

(b) the amount of duty properly payable on particular goods exceeds the amount of duty that would have been payable on those goods if the amount were determined on the basis that the statement was not false or misleading;

the CEO may within 12 months after the statement was made, by notice in writing, require the owner of the goods (not being a person who is to be treated as the owner of the goods by reason of being an agent of the owner) to pay, within a period of 90 days after service of the notice, a penalty equal to twice the amount of the excess, or a penalty of $20, whichever is the greater.

(2) The notice may be served on the owner of the goods or on the agent of the owner.

(3) If an amount required to be paid in accordance with subsection (1) within a period of 90 days is not so paid it becomes, upon the expiration of that period, a debt due to the Commonwealth and may be recovered in a court of competent jurisdiction.

(4) Where a person in respect of whom a demand for payment of penalty in respect of particular goods has been made under subsection (1) makes application under subsection 273GA (2) for review of the decision as to the amount of duty payable on those goods:

(a) the period commencing on the making of that application and ending on the final determination of the amount of duty by the Administrative Appeals Tribunal or by a Court on appeal from the Tribunal shall not be taken into account in computing the period of 90 days referred to in subsections (1) and (3); and

(b) if it is determined, or ultimately determined, that the duty, or any part of the duty, demanded in respect of those goods is not payable, the demand for penalty shall thereupon be treated as if it were, and had always been, a demand for such amount, if any, as would be appropriate under subsection (1) having regard to that determination of the Tribunal or Court.

(5) Where the CEO serves a notice under subsection (2) in relation to a statement made, or an omission from a statement made, by a person, proceedings shall not be instituted under section 234 against that person in relation to that statement or omission.

(6) For the purposes of subsection (1), an import entry that is taken, under section 71L, to have been communicated to Customs is treated as a statement made to the CEO.

Remission of penalty

243U. (1) Where a penalty is payable under section 243T as a result of a statement, or an omission from a statement, the CEO may, on the basis of a written application made to the CEO within 30 days after the CEO served the notice under subsection 243T (2) in relation to the statement or the omission from the statement, by the person liable to pay the penalty, remit the whole or any part of that penalty.

(2) Within 30 days after receiving an application for remission of penalty the CEO shall inform the applicant of the CEO's decision in relation to the application.

(3) Where the CEO fails to inform the applicant of the decision within 30 days after receiving the application, the CEO shall, for the purposes of section 273GA, be taken to have decided not to remit penalty.

(4) In considering an application under subsection (1) to remit the whole or a part of a penalty payable in respect of a statement or an omission from a statement, being a statement or omission made by the applicant or by an agent of the applicant, the CEO shall have regard only to the following matters:

(a) whether the applicant or the applicant's agent, as the case requires, had voluntarily admitted that the statement was, or was as a result of the omission, false or misleading;

(b) the risk to the revenue occasioned by such a statement or omission;

(c) the capacity of the applicant or of the applicant's agent, as the case requires, to avoid making such a statement or omission and the extent to which that capacity was exercised;

(d) the history of the applicant or of the applicant's agent, as the case requires, in relation to the making of statements or omissions giving rise to convictions under paragraph 234 (1) (d) or to liability for penalty under section 243T.

(5) Where a decision of the Administrative Appeals Tribunal on an application under subsection 273GA (2) or of a Court on an appeal from such a decision will result in a lesser amount of duty being payable in respect of imported goods than the amount demanded by a Collector, or in no duty being payable in respect of those goods, the CEO shall remit any penalty paid under section 243T in respect of those goods to the extent necessary to give effect to that decision of the Tribunal or Court.

Section 243T not to apply in certain cases

243V. (1) Where the owner of goods or the agent of the owner is uncertain whether particular information included in a statement made in respect of those goods might be regarded as false or misleading in a material particular, that owner or agent may, by writing included in the statement, nominate that information as information of which the owner or agent is uncertain and set out the reasons for that uncertainty, and, where the owner or agent does so, no penalty shall be imposed under section 243T in relation to that information.

(2) Where the owner of goods or the agent of the owner is uncertain whether, by reason of the omission of particular information from a statement made in respect of those goods, that statement might be regarded as misleading in a material particular, that owner or agent may, by writing included in the statement, specify the information that has been omitted and set out the reasons for uncertainty concerning the effect of its omission, and, where the owner or agent does so, no penalty shall be imposed under section 243T in relation to that omission.

(3) Where the owner of goods or the agent of the owner is uncertain whether particular information included in a computer import entry made in respect of those goods might be regarded as false or misleading in a material particular, that owner or agent may, in that entry:

(a) nominate that information as information of which the owner or agent is uncertain; and

(b) set out the reasons for that uncertainty;

and, where the owner or agent does so, no penalty shall be imposed under section 243T in relation to that information.

(4) Where the owner of goods or the agent of the owner is uncertain whether, because of the omission of particular information from a computer import entry made in respect of those goods, that import entry might be regarded as misleading in a material particular, the owner or agent may, in that entry:

(a) specify the information that has been omitted; and

(b) set out the reasons for uncertainty concerning the effect of its omission;

and, where the owner or agent does so, no penalty shall be imposed under section 243T in relation to that omission.

PART XIV—CUSTOMS PROSECUTIONS

Interpretation

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.

Institution of prosecutions

245. (1) Customs prosecutions may be instituted by the CEO in the name of the office of the CEO by action, information or other appropriate proceeding:

(a) in the Supreme Court of a State;

(b) in the Supreme Court of the Australian Capital Territory;

(c) in the Supreme Court of the Northern Territory;

(d) in a County Court or District Court of a State;

(e) in a Local Court, being a Local Court of full jurisdiction, of South Australia or of the Northern Territory; or

(f) in a court of summary jurisdiction of a State, of the Australian Capital Territory or of the Northern Territory.

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

(4) Where a Customs prosecution for a pecuniary penalty that, but for this subsection, would exceed $5,000 is instituted in a court referred to in paragraph (1) (f), the amount of that penalty that exceeds $5,000 shall be taken to have been abandoned.

Prosecutions in accordance with practice rules

247. Every Customs prosecution in a court referred to in subsection 245 (1) may be commenced prosecuted and proceeded with in accordance with any rules of practice (if any) 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.

State Court practice

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.

Commencement of prosecutions

249. Customs prosecutions may be instituted at any time within 5 years after the cause thereof.

Information to be valid if in words of Act

250. All informations summonses other originating processes 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.

Property in goods subject to control of Customs

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.

No objection for informality

251. No objection shall be taken or allowed to any information, summons or other originating process for any alleged defect therein in substance or in form or for any variance between such information, summons or other originating process 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.

Conviction not to be quashed

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.

Protection to witnesses

253. No witness on behalf of the Minister, CEO 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 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

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 matters 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 etc.

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 CEO or the Regional Director 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.

Conduct by directors, servants or agents

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

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

(a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or

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

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

(3) Where, in a Customs prosecution in respect of any conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that a

servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

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

(a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or

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

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

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

Collector may levy on goods in his possession

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.

Imprisonment not to release penalty

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.

Parties may recover costs

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.

Application of penalties

264. **(1)** All penalties and forfeitures recovered under any Customs Act shall be applied to such purposes and in such proportions as the CEO may direct.

(2) This section does not apply to:

(a) penalties recovered in proceedings under subsection 243B (1);

(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 ENTER GOODS FOR HOME CONSUMPTION AT CONCESSIONAL RATES

Interpretation

265. **(1)** 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;

"particular goods" includes goods included in a particular class or kind of goods;

"scheme" means a scheme formulated by the Minister under section 266.

Tender schemes

266. **(1)** The Minister may, by instrument in writing, formulate a scheme for calling, and dealing with, tenders for the right to enter for home consumption during a period, or each of a number of periods, a determined quantity of particular goods, or particular goods of a determined value, 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 subsection (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

267. (1) Where, in accordance with a call for tenders made under a scheme, a person furnishes a tender for the right to enter for home consumption during a period, or each of a number of periods, a quantity to be determined in accordance with that tender of particular goods, or particular goods of a value to be determined in accordance with that tender, at rates of duty to be determined in accordance with that tender, that tender shall not be considered unless it is accompanied by an undertaking in writing by that person, in terms satisfactory to the CEO, that, if that tender is accepted and:

(a) the *Customs Tariff Act 1995* is so altered or proposed to be so altered that rates of duty determined in accordance with that 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 CEO makes a determination under section 273 by virtue of which those items or proposed items apply to the quantity determined in accordance with that tender of those goods, or the quantity of those goods having the value determined in accordance with that tender, to be entered for home consumption by that person during that period, or each of those periods, as the case may be;

the person will, during that period, or each of those periods, as the case may be, enter for home consumption under:

(c) any of those items, or proposed items; or

(d) any appropriate item, or proposed item, of a Customs Tariff that is not expressed to apply to goods as prescribed by by-law;

that quantity of those goods, or the quantity of those goods having that value.

(2) An undertaking referred to in subsection (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, in accordance with subsection 266 (2), in the relevant call for tenders.

(3) An undertaking referred to in subsection (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, in accordance with subsection 266 (4), 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.

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

268. (1) A scheme may provide for the transfer, with the approval of the CEO, from one person to another of a right to enter for home consumption during a period, or each of a number of periods, a specified quantity of particular goods, or particular goods of a specified value, at concessional rates of duty.

(2) The CEO shall not give an approval to a transfer under a scheme of a right to enter for home consumption a specified quantity of particular goods, or particular goods of a specified value, unless the transferee:

(a) gives an undertaking, in writing, in terms satisfactory to the CEO, that, if by virtue of a determination under section 273 the 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 entered for home consumption by the transferee in the exercise of the right, the transferee will, in the exercise of that right, enter for home consumption those goods, or the quantity of those goods having that value, 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 subsection (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 subsection (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.

Revocation or variation of undertaking

269. A person who has given an undertaking in accordance with section 267 or 268 may, with the approval of the CEO, revoke or vary that undertaking.

Recovery of penalties

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 XVA—TARIFF CONCESSION ORDERS

Division 1—Preliminary

Interpretation

269B. (1) In this Part, unless the contrary intention appears:

"capital equipment" means goods, which if imported into Australia, would be goods to which Chapters 84, 85, 86, 87, 89 or 90 of Schedule 3 to the *Customs Tariff Act 1995* would apply;

Customs Tariff Act 1995 includes that Act as proposed to be altered by a Customs Tariff alteration proposed, or intended to be proposed, in the Parliament;

"gazettal day", in relation to a TCO application, means:

(a) unless paragraph (b) applies—the day on which the CEO publishes a notice in respect of the application in the *Gazette* under subsection 269K (1); or

(b) if, in accordance with section 269N, the CEO publishes a notice in respect of the application in the *Gazette* under subsection 269K (1) in substitution for an earlier notice—the day on which the CEO publishes that substituted notice;

"goods produced in Australia" has the meaning given by section 269D;

last day for submissions means:

(a) in relation to an original TCO application:

(i) so far as concerns a person invited by the CEO under section 269M to lodge a submission in respect of the TCO application—the day fixed in the notice inviting that submission; and

(ii) so far as concerns any other person—the day occurring 50 days after the gazettal day; and

(b) in relation to an amended TCO application:

(i) so far as concerns a person invited under paragraph 269L (4B) (a) to lodge a further submission in respect of the amended TCO application—the day occurring 14 days after the notification containing that invitation; and

(ii) so far as concerns any other person—the day occurring 14 days after publication of a notice under paragraph 269L (4B) (b) inviting submissions in relation to the amended application.

"lodged", in relation to a TCO application, includes taken to be lodged because of the operation of section 269J;

"ordinary course of business" has the meaning given by section 269E;

"prescribed item" means an item in Schedule 4 to the *Customs Tariff Act 1995* that is expressed to apply to goods that a TCO declares are goods to which the item applies;

"repair", in relation to goods, includes renovate;

"substitutable goods", in respect of goods the subject of a TCO application or of a TCO, means goods produced in Australia that are put, or are capable of being put, to a use that corresponds with a use (including a design use) to which the goods the subject of the application or of the TCO can be put;

"TCO" means a tariff concession order made under section 269P or 269Q or taken to be made under section 269P or 269Q because of the operation of section 269SC;

"TCO application" means:

(a) an application for a TCO under section 269F; or

(b) an application for a TCO under section 269F as amended under section 269L; or

(c) a proposal for the issue of a TCO that is to be taken under section 269J to be a TCO application.

(2) Despite the definition of "days" in section 4, Sundays and public holidays are counted as days for the purpose of computing a period for the purposes of this Part but nothing in this subsection derogates from the operation of section 36 of the *Acts Interpretation Act 1901*.

(3) In determining whether goods produced in Australia are put, or are capable of being put, to a use corresponding to a use to which goods the subject of a TCO, or of an application for a TCO, can be put, it is irrelevant whether or not the first-mentioned goods compete with the second-mentioned goods in any market.

Interpretation—core criteria

269C. For the purposes of this Part, a TCO application is taken to meet the core criteria if, on the day on which the application was lodged, no substitutable goods were produced in Australia in the ordinary course of business.

Interpretation—goods produced in Australia

269D. (1) For the purposes of this Part, goods, other than unmanufactured raw products, are taken to be produced in Australia if:

(a) the goods are wholly or partly manufactured in Australia; and

(b) not less than ¼ of the factory or works costs of the goods is represented by the sum of:

(i) the value of Australian labour; and

(ii) the value of Australian materials; and

(iii) the factory overhead expenses incurred in Australia in respect of the goods.

(2) For the purposes of this Part, goods are to be taken to have been partly manufactured in Australia if at least one substantial process in the manufacture of the goods was carried out in Australia.

(3) Without limiting the meaning of the expression "substantial process in the manufacture of the goods", any of the following operations or any combination of those operations does not constitute such a process:

(a) operations to preserve goods during transportation or storage;

(b) operations to improve the packing or labelling or marketable quality of goods;

(c) operations to prepare goods for shipment;

(d) simple assembly operations;

(e) operations to mix goods where the resulting product does not have different properties from those of the goods that have been mixed.

(4) For the purposes of this section, the CEO may, by instrument in writing published in the *Gazette*:

(a) direct that the factory or works cost of goods is to be determined in a specified manner; and

(b) direct that the value of Australian labour, the value of Australian materials or the factory overhead expenses incurred in Australia in respect of goods is to be determined in a specified manner;

and those directions have effect accordingly.

(5) The provisions of sections 48 (other than paragraphs (1) (a) and (b) and subsection (2)), 48A, 48B, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to directions given under subsection (4) as if:

(a) references in those provisions to regulations were references to directions; and

(b) references in those provisions to the repeal of a regulation were references to the revocation of a direction.

Interpretation—the ordinary course of business

269E. (1) For the purposes of this Part, other than section 269Q, goods (other than made-to-order capital equipment) that are substitutable goods in relation to goods the subject of a TCO application are taken to be produced in Australia in the ordinary course of business if:

(a) they have been produced in Australia in the 2 years before the application was lodged; or

(b) they have been produced, and are held in stock, in Australia; or

(c) they are produced in Australia on an intermittent basis and have been so produced in the 5 years before the application was lodged;

and a producer in Australia is prepared to accept an order to supply them.

(2) For the purposes of this Part, goods that:

(a) are substitutable goods in relation to goods the subject of a TCO application; and

(b) are made-to-order capital equipment;

are taken to be produced in Australia in the ordinary course of business if:

(c) a producer in Australia:

(i) has made goods requiring the same labour skills, technology and design expertise as the substitutable goods in the 2 years before the application was lodged; and

(ii) could produce the substitutable goods with existing facilities; and

(d) the producer is prepared to accept an order to supply the substitutable goods.

(3) In this section:

made-to-order capital equipment means a particular item of capital equipment:

(a) that is made in Australia on a one-off basis to meet a specific order rather than being the subject of regular or intermittent production; and

(b) that is not produced in quantities indicative of a production run.

Division 2—Making and processing TCO applications

Making a TCO application

269F. (1) A person may apply to the CEO for a tariff concession order in respect of goods.

(2) An application must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such information as the form requires; and

(d) be signed in the manner indicated in the form.

(3) Without limiting the generality of paragraph (2) (c), a TCO application must contain:

(a) a full description of the goods to which the application relates; and

(b) a statement of the tariff classification that, in the opinion of the applicant, applies to the goods; and

(c) if the applicant is not proposing to make use of the TCO to import the goods to which the application relates into Australia on the applicant's own behalf—the identity of the importer for whom the applicant is acting; and

(d) particulars of all the inquiries made by the applicant (including inquiries made of prescribed organisations) to assist in establishing that there were reasonable grounds for believing that, on the day on which the application was lodged, there were no producers in Australia of substitutable goods.

(4) A TCO application may be lodged with Customs:

(a) by leaving it at a place that has been allocated for lodgement of TCO applications at Customs House in Canberra; or

(b) by posting it by prepaid post to a postal address specified by Customs in the approved form; or

(c) by sending it by electronic facsimile to a facsimile number specified by Customs in the approved form;

and the application is taken to have been lodged when the application, or a facsimile of the application, is first received by an officer of Customs.

(5) The day on which an application is taken to have been lodged must be recorded on the application.

The applicant's obligation

269FA. It is the responsibility of an applicant for a TCO to establish, to the satisfaction of the CEO, that, on the basis of:

(a) all information that the applicant has, or can reasonably be expected to have; and

(b) all inquiries that the applicant has made, or can reasonably be expected to make;

there are reasonable grounds for asserting that the application meets the core criteria.

Withdrawing a TCO application

269G. (1) A person who has lodged a TCO application under section 269F may withdraw the application at any time before a decision is made under section 269P or 269Q in relation to that application.

(2) A withdrawal of a TCO application:

(a) must be in writing; and

(b) must be lodged with the CEO in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and

(c) must have the day of its lodgement recorded.

(3) If a notice informing of the lodgement of a TCO application is published in the *Gazette* before that application is withdrawn, the CEO must publish in the *Gazette*, as soon as practicable after the withdrawal is lodged, a notice:

(a) stating that the TCO application has been withdrawn; and

(b) describing the goods to which the TCO application related; and

(c) specifying the *Gazette* number and date of the previous notice relating to the TCO application; and

(d) specifying the date of withdrawal of the TCO application.

Screening the application

269H. (1) Not later than 28 days after a TCO application is lodged, the CEO must:

(a) if he or she is satisfied:

(i) that the application complies with section 269F; and

(ii) that, having regard to the information disclosed in the application and to the particulars of the inquiries made by the applicant, there are reasonable grounds for believing that the applicant has discharged the responsibility referred to in section 269FA; and

(b) if he or she is not aware of any producer in Australia of substitutable goods;

by notice in writing given to the applicant, inform the applicant that the application is accepted as a valid application; and

(c) if he or she is not so satisfied; or

(d) if he or she is aware of such a producer;

by notice in writing given to the applicant, inform the applicant that the application is rejected and of the reasons for the rejection.

(2) If the CEO has not, within that period, accepted or rejected the application, this Part has effect as if the CEO had, immediately before the end of that period, informed the applicant, by notice in writing, that the application is accepted as a valid application.

CEO may reject a TCO application in relation to goods referred to in section 269SJ

269HA. **(1)** If, at any time during the period starting from the receipt of a TCO application and ending with the making of a TCO, the CEO becomes satisfied that the goods to which the application relates are goods in respect of which, under subsection 269SJ (1), the CEO is prevented from making a TCO, the CEO must:

(a) reject the application; and

(b) by notice in writing given to the applicant, inform the applicant that the application is rejected and of the reason for the rejection.

(2) If, at any time after the publication of a notice in the *Gazette* under subsection 269K (1), the CEO rejects the application to which the notice relates under subsection (1), the CEO must, as soon as practicable after rejecting the application, publish a notice in the *Gazette* stating that the application has been rejected and giving the reason for the rejection.

Applications taken to be lodged in certain circumstances

269J. **(1)** If the CEO decides that it is desirable to consider making a TCO despite the absence of a TCO application, the CEO may declare, in writing, that he or she has so decided.

(2) A declaration under subsection (1) must include a proposal for the issue of the TCO in respect of the goods referred to in the declaration.

(3) If the CEO makes a declaration under this section, this Part has effect as if:

(a) the proposal contained in the declaration were a TCO application lodged under section 269F on the day on which the declaration is made; and

(b) the application had been accepted under section 269H as a valid application on that day.

Processing a valid application

269K. **(1)** As soon as practicable after accepting a TCO application as a valid application, the CEO must publish a notice in the *Gazette*:

(a) stating that the application has been lodged; and

(aa) identifying the applicant; and

(ab) if the applicant is not proposing to make use of the TCO to import the goods to which the application relates into Australia on the applicant's own behalf—identifying the importer for whom the applicant is acting; and

(b) providing a description of the goods to which the application relates including a reference to the Customs tariff classification that, in the opinion of the CEO, applies to the goods; and

(c) inviting any persons who consider that there are reasons why the TCO should not be made to lodge a submission with the CEO not later than 50 days after the gazettal day.

(2) A submission must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such information as the form requires; and

(d) be signed in the manner indicated in the form.

(3) A submission:

(a) must be lodged with the CEO in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and

(b) must have the day of its lodgement recorded.

(4) If a person lodges a submission later than 50 days after the gazettal day in respect of a TCO application without being invited by the CEO to do so under section 269M, the CEO must not take the submission into account in determining whether to make a TCO.

Amendment of TCO applications

269L. (1) If a person lodges a submission in respect of a TCO application within 50 days after the gazettal day, the CEO must, within 14 days after the end of that 50 day period, give the applicant for the TCO a notice in writing setting out:

(a) the name and address of each person who has lodged a submission within that period; and

(b) a short statement of the grounds on which each submission is based.

(2) The applicant may, within 28 days of receiving a notice under subsection (1) and having regard to the grounds on which each submission was made, notify the CEO, in writing, that he or she proposes to amend the application by altering the description of the goods the subject of the application, and set out in that notice the proposed amendment.

(3) The applicant must not, under subsection (2), propose an amendment of an application:

(a) that would cause the goods to which the application relates to be covered by a different Customs tariff classification to the one notified by the CEO in the *Gazette* under section 296K; or

(b) that would do otherwise than narrow the description of the goods as set out in the application.

(4) As soon as practicable after, but not more than 7 days after, a proposed amendment of a TCO application was notified to the CEO, the CEO must consider the proposed amendment and:

(a) if the CEO is satisfied that the proposed amendment does not contravene subsection (3)—the CEO must inform the applicant that he or she is so satisfied and that subsection (4B) applies accordingly; or

(b) if the CEO is not so satisfied—the CEO must inform the applicant that he or she is not so satisfied and of the reasons for not being so satisfied.

(4A) If the CEO is not satisfied that a proposed amendment of a TCO does not contravene subsection (3), the CEO must continue to consider the application as it was originally made.

(4B) If the CEO is satisfied that the proposed amendment does not contravene the requirements of subsection (3), the CEO must, within 14 days after becoming so satisfied:

(a) notify the proposed amendment to each person who lodged a submission referred to in subsection (1) and, subject to the operation of subsections (5) and (6), invite that person, if he or she considers there are reasons not dealt with in the original submission why the TCO as proposed to be amended should not be made, to lodge a further submission within 14 days after being so notified; and

(b) publish a notice in the *Gazette* setting out the amended description in relation to the application and inviting persons who consider that there are reasons why the TCO as proposed to be amended should not be made to lodge a submission with the CEO no later than 14 days after the publication of that notice.

(4C) The notification and subsequent publication of an amendment of a TCO application does not affect the gazettal day in relation to the application or any time limits calculated by reference to that gazettal day.

(5) If a person who lodged a submission referred to in subsection (1) notifies the CEO, in writing, within 14 days after being notified of a proposed amendment, that he or she no longer objects to the TCO application, the submission is taken to have been withdrawn.

(6) If a person who lodged a submission referred to in subsection (1) does not so notify the CEO, he or she is taken to wish to proceed with the submission as if it were a submission made in respect of the amended application.

Customs may invite submissions or seek other information, documents or material

269M. (1) If the CEO considers that, in relation to a particular TCO application, a person may have reason to oppose the making of the TCO to which the application relates, he or she may, by notice in writing, invite the person to lodge a written submission with the CEO within a period specified in the notice ending not later than 150 days after the gazettal day.

(2) A submission must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such information as the form requires; and

(d) be signed in the manner indicated in the form.

(3) A submission:

(a) must be lodged with the CEO in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and

(b) must have the day of its lodgement recorded.

(4) If the CEO considers that, in relation to a particular TCO application, any person (including the applicant or a person who has lodged a submission with the CEO) may be able to supply information or produce a document or material relevant to the consideration of the application, the CEO may, by notice in writing, request the supply of the information in writing or the production of the document or material within a period specified in the notice and ending not later than 150 days after the gazettal day.

(5) If a person refuses or fails to lodge a submission under subsection (1) or to supply information or produce a document or material under subsection (4) within the period allowed but subsequently lodges that submission, supplies the information or produces the document or material, the CEO must not take that submission, information, document or material into account in determining whether to make a TCO.

(6) At any time during the period of 150 days starting on the gazettal day, the CEO may, for the purpose of dealing with a TCO application, and despite section 16 of the *Customs Administration Act 1985*, give a copy of all, or of a part, of the application to a prescribed organisation with a view to obtaining the advice of the organisation in relation to the question whether there are producers in Australia of substitutable goods.

Reprocessing of TCO applications

269N. (1) If, after gazettal day in respect of a TCO application but before a decision is made on the application, the CEO is satisfied that:

(a) because of an amendment of a Customs Tariff; or

(b) having regard to a decision of a court or of the Administrative Appeals Tribunal; or

(c) having regard to written advice on the matter given by an officer of Customs;

the tariff classification that was stated in the notice published in the *Gazette* under section 269K to apply to the goods the subject of the application has not, with effect from the gazettal day or a later day, applied to the goods, the CEO must take action to reprocess the application.

(2) If the CEO is satisfied that, in publishing a notice in the *Gazette* under section 269K in relation to a TCO application, there has been a transcription error in the description of the goods the subject of the application including the tariff classification that is stated to apply to the goods, the CEO must take action to reprocess the application.

(3) Where the CEO is required to take action under subsection (1) or (2), he or she must, as soon as practicable after becoming so required, notify:

(a) the applicant; and

(b) all persons from whom submissions in relation to the application have been received; and

(c) all persons from whom submissions in relation to the application have been sought;

that, for the reasons specified in subsection (1) or (2), it is necessary to reprocess the application and that a new notice of the application will be published in the *Gazette* for that purpose.

(4) As soon as practicable after giving a notice under subsection (3), the CEO must publish in the *Gazette* a new notice under subsection 269K (1) in relation to the TCO application in substitution for the notice previously published.

(5) A person who had lodged a submission in relation to the original notice published under section 269K in respect of a TCO application may notify the CEO in writing, not later than 50 days after the day of publication of the substituted notice under that section, that he or she wishes to proceed with the submission, or wishes to proceed with it subject to stated modifications, as if it had been provided in response to the substituted notice and, where the CEO is so notified, the submission is to be treated as if it had been so provided on the day of that notification.

(6) If a TCO is made in respect of a TCO application that is reprocessed in accordance with this section, the day on which the TCO is to be taken to come into force is unaffected by the decision to reprocess that application.

Division 3—Making and operation of TCOs

The making of a standard TCO

269P. (1) If a TCO application in respect of goods, other than goods sent out of Australia for repair, has been accepted as a valid application under section 269H, the CEO must decide, not later than 150 days after the gazettal day, whether or not he or she is satisfied, having regard to:

(a) the application; and

(b) all submissions lodged with the CEO before the last day for submissions; and

(c) all information supplied and documents and material produced to the CEO in accordance with a notice under subsection 269M (4); and

(d) any inquiries made by the CEO;

that the application meets the core criteria.

(2) If the CEO fails to make a decision under subsection (1) in respect of a TCO application within 150 days after the gazettal day, the CEO is taken, for the purposes of subsection (1), at the end of that period, to have made a decision that he or she is not satisfied that the application meets the core criteria.

(3) If the CEO is satisfied that the application meets the core criteria, he or she must make a written order declaring that the goods the subject of the TCO application are goods to which a prescribed item specified in the order applies.

(4) The TCO must include:

(a) a description of the goods the subject of the order including a reference to the Customs tariff classification that, in the opinion of the CEO, applies to the goods; and

(b) a statement of the day on which the TCO is to be taken to have come into force; and

(c) if subsection 269SA (1) applies in relation to the TCO—a statement of the day on which it ceases to be in force.

The making of a TCO for goods requiring repair

269Q. (1) If a TCO application in respect of goods sent out of Australia for repair has been accepted as a valid application under section 269H, the CEO must decide, not later than 150 days after the gazettal day, whether or not he or she is satisfied, having regard to:

(a) the application; and

(b) all submissions lodged with the CEO before the last day for submissions; and

(c) all information supplied and documents and material produced to the CEO in accordance with a notice under subsection 269M (4);

that there is no one in Australia capable of repairing those goods in the ordinary course of business.

(2) If the CEO fails to make a decision under subsection (1) in respect of a TCO application within 150 days after the gazettal day, the CEO is taken, for the purposes of subsection (1), at the end of that period, to have made a decision that he or she is not satisfied of the matters referred to in that subsection in relation to the application.

(3) If the CEO is satisfied of the matters referred to in subsection (1) in relation to the application, he or she must make a written order declaring that the goods the subject of the TCO application are goods to which a prescribed item specified in the order applies.

(4) The TCO must include:

(a) a description of the goods the subject of the order including a reference to the Customs tariff classification that, in the opinion of the CEO, applies to the goods; and

(b) a statement of the day on which the TCO is to be taken to have come into force.

(5) For the purposes of this section, a person is taken to be capable of repairing goods in the ordinary course of business if, in the ordinary course of business, the person is prepared to accept orders to repair those goods.

Notification of TCO decisions

269R. (1) As soon as practicable after the CEO makes a decision under subsection 269P (1) or 269Q (1), the CEO must:

(a) by notice in writing, inform the applicant of the decision; and

(b) by notice published in the *Gazette*, inform all other interested persons of the decision.

(2) If the decision has led to the making of a TCO, the notice given to the applicant and published in the *Gazette* must include full particulars of the TCO.

(3) A failure to comply with subsection (1) or (2) does not affect the validity of the TCO concerned.

Operation of TCOs

269S. (1) Subject to the operation of subsection 269SA (2), a TCO is to be taken to have come into force on:

(a) unless paragraph (b) applies—the day on which the application for the TCO was lodged; or

(b) if there was more than one application for the TCO—the day on which the earliest application for the TCO was lodged.

(2) Subject to section 269SG, a TCO applies in relation to the goods the subject of the TCO that were or are first entered for home consumption on or after the day on which the TCO is taken to have come into force.

(3) Subject to the operation of subsection 269SA (1), a TCO continues in force until it is revoked under section 269SC or 269SD.

Consequence of commencement or cessation of production before TCO decision

269SA. (1) If the CEO is satisfied, in relation to a TCO application:

(a) that the application meets the core criteria; and

(b) that on a day (the **"production start-up day"**) occurring later than the day on which the application was lodged but before the making of the decision on the application, substitutable goods in relation to the goods the subject of the application commenced to be produced in Australia; and

(c) that if the production start-up day had occurred on the day on which the application was lodged, the CEO would not have been satisfied that the application met the core criteria;

the TCO that the CEO makes continues in force only until the production start-up day.

(2) If the CEO is satisfied, in relation to a TCO application:

(a) that the application does not meet the core criteria; and

(b) that on a day (the **"production close-down day"**) occurring later than the day on which the application was lodged but before the making of the decision on the application, substitutable goods in relation to the goods the subject of the application ceased to be produced in Australia; and

(c) that if the production close-down day had occurred on the day on which the application was lodged the CEO would have been satisfied that the application met the core criteria;

the CEO must make a TCO in accordance with section 269P, but the TCO is in force only from the production close-down day.

Division 4—Revocation of TCOs

Request for revocation of TCOs

269SB. (1) If:

(a) a TCO is in force on a particular day; and

(b) a person claiming to be a producer in Australia of substitutable goods in relation to the goods covered by the order is of the view that if:

(i) the TCO were not in force on that particular day; and

(ii) that particular day were the day on which the TCO application was lodged;

the TCO would not have been made;

the person may request the CEO to revoke the order.

(2) A request must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such information as the form requires; and

(d) be signed in the manner indicated in the form.

(3) A request for revocation may be lodged with Customs:

(a) by leaving it at a place that has been allocated for the lodgement of TCO applications at Customs House, Canberra; or

(b) by posting it by prepaid post to a postal address specified by Customs in the approved form; or

(c) by sending it by electronic facsimile to a facsimile number specified by Customs in the approved form;

and the request is taken to have been lodged when the request, or a facsimile of the request, is first received by an officer of Customs.

(4) The day on which the request is to be taken to be lodged, must be recorded on the request.

Processing requests for revocation of TCOs

269SC. (1) Not later than 60 days after lodgement of a request for revocation of a TCO, and after having regard to the request and to any other information, document or material given to the CEO under section 269SF, the CEO must decide whether or not he or she is satisfied:

(a) that, on the day of lodgement of the request, the person requesting the revocation of the TCO is a producer in Australia of goods that are substitutable goods in relation to the goods the subject of the order; and

(b) that, if the TCO were not in force on that day but that day were the day on which the application for that TCO was lodged, the CEO would not have made the TCO.

(1A) As soon as practicable after receiving a request for revocation of a TCO, the CEO must publish a *Gazette* notice stating:

(a) that the request has been lodged; and

(b) the date that the request was lodged; and

(c) the full particulars of the TCO to which the request relates.

(2) If the CEO fails to make a decision in respect of a request for the revocation of a TCO within 60 days after lodgement of the request, the CEO is taken, for the purposes of subsection (1), at the end of that period, to have decided that he or she is not satisfied of the matters referred to in that subsection in relation to the request.

(3) If the CEO is satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO, the CEO must make an order revoking the TCO.

(4) If the CEO is satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO but is also satisfied that if:

(a) the TCO were not in force on the day of lodgement of the request; and

(b) that day were the day of lodgment of an application for another TCO (the **"narrower TCO"**) in respect only of goods covered by the TCO that are not produced in Australia by the person making the request;

the CEO would have made such a narrower TCO, he or she must:

(c) revoke the TCO; and

(d) make, in its place, such a narrower TCO.

(5) If the CEO is not satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO, the CEO must refuse the request.

(6) An order under subsection (3) or (4) revoking a TCO comes into force on the day on which the request to revoke the TCO was lodged.

(7) If a narrower TCO is made in place of another TCO that is revoked in subsection (4), that narrower TCO comes into force, for the purposes of this Part, from the date of effect of the revocation of the other TCO, as if it had been made under section 269P or 269Q.

Revocation at the initiative of Customs

269SD. (1AA) If:

(a) a TCO is in force on a particular day; and

(b) the CEO believes that if:

(i) the TCO were not in force on that day; and

(ii) that day were the day on which the application for the TCO was lodged;

the CEO would not have made the TCO;

the CEO may, not later than 14 days after that day, publish a notice in the *Gazette*:

(c) declaring his or her intention, subject to subsection (1AB), to make an order revoking the TCO with effect from that particular day (the **"intended revocation day"**); and

(d) inviting any person who might be affected by the revocation of that TCO to give a written submission to the CEO within 28 days of the notice concerning the proposed revocation.

(1AB) Within 60 days after the date of publication of the notice referred to in subsection (1AA), the CEO must, after consideration of the matters raised in any submissions made in response to the invitation and of any other relevant matters:

(a) decide whether or not he or she is satisfied of the matters referred to in paragraph (1AA) (b); and

(b) if the CEO is so satisfied—make an order revoking the TCO with effect from the intended revocation day.

(1) If the CEO is satisfied that a TCO is no longer required because the general tariff rate in respect of the goods the subject of the order has been reduced to "Free", the CEO may make an order revoking the TCO with effect from the day the tariff rate was so reduced.

(1A) If the CEO is satisfied on any day that a TCO is no longer required because, in the 2 years preceding that day, the TCO has not been quoted in an import entry to secure a concessional rate of duty, the CEO may make an order revoking the TCO with effect from that day.

(2) If the CEO is satisfied that:

(a) because of an amendment of a Customs tariff; or

(b) having regard to a decision of a court or of the Administrative Appeals Tribunal; or

(c) having regard to written advice on the matter given by an officer of Customs;

the tariff classification that is stated in a TCO to apply to the goods the subject of the TCO has not, with effect from a particular day, applied to those goods, the CEO must:

(d) make an order revoking the TCO with effect from that day; and

(e) make a new TCO in respect of the goods with effect from the revocation.

(3) If the CEO is satisfied that, in making a TCO, there has been a transcription error in the description of goods the subject of the TCO including the tariff classification that is stated in the TCO to apply to the goods, the CEO may:

(a) make an order revoking the TCO with effect from the day the TCO came into force; and

(b) make a new TCO in respect of goods that corrects the error with effect from the revocation.

(4) The particular day referred to in subsection (2) may be the day on which the TCO that is revoked came into force or a later day.

(5) If the CEO is satisfied that a TCO contains a description of the goods the subject of the order in terms of their intended end use, the CEO may make an order revoking the TCO with effect from the revocation.

Notification of revocation decisions

269SE. **(1)** As soon as practicable after the CEO makes a decision under subsection 269SC (1), the CEO must:

(a) by notice in writing, inform the applicant of the decision; and

(b) by notice published in the *Gazette*, inform all other interested persons of the decision.

(2) As soon as practicable after the CEO makes a decision to make an order under subsection 269SD (1AB), (1) or (1A), (2) or (5), the CEO must, by notice published in the *Gazette*, inform all interested persons of the decision.

(3) If the decision referred to in subsection (1) or (2) has led to the making of an order revoking a TCO or both to the making of an order revoking a TCO and the making of a new TCO, the notice of that decision given to the applicant and published in the *Gazette* must include full particulars of the order or orders.

(4) A failure to comply with subsection (1), (2) or (3) does not affect the validity of the decision concerned or of any order or orders to which it has led.

Customs may seek information, documents or material relating to revocation

269SF. **(1)** If the CEO considers that, in relation to a request for revocation of a TCO, any person (including the person who made the request) may be able to supply information or produce a document or material relevant to the consideration of the request, the CEO may, by notice in writing, request the supply of the information or the production of the document or material within a period specified in the notice and ending not later than 60 days after receiving the request.

(2) Any information provided in satisfaction of a request under subsection (1) must be provided in writing.

(3) If a person refuses or fails to supply information or produce a document or material under subsection (1) within the period allowed but subsequently supplies the information or produces the document or material, the CEO must not take that information, document or material into account in determining whether to revoke a TCO.

Effect of revocation on goods in transit and capital equipment on order

269SG. **(1)** Subject to subsection (2), if a TCO is revoked under subsection 269SC (3) or (4) or 269SD (1AB) or (1A), the TCO ceases to apply in relation to goods entered for home consumption on or after the day on which the revocation comes into effect.

(2) Despite the revocation of a TCO under subsection 269SC (3) or (4) or 269SD (1AB) or (1A) in respect of goods, the TCO continues to apply in relation to:

(a) goods that:

(i) were imported into Australia on or before the day on which the revocation came into effect; and

(ii) are entered for home consumption, before, on, or within 28 days after, that day; and

(b) goods that:

(i) were in transit to Australia on that day; and

(ii) are entered for home consumption before, on, or within 28 days after, the day on which they were imported into Australia.

(3) For the purposes of subparagraph (2) (b) (i), goods shall be taken to be in transit to Australia if, and only if, they have left for direct shipment to Australia from a place of manufacture, or a warehouse, in the country from which they are being exported.

(4) Where an officer of Customs is satisfied that, after a TCO in relation to made-to-order capital equipment comes into force but before its revocation under subsection 269SC (3) or (4) or 269SD (1AB) or (1A), a firm order had been placed for the purchase of any such equipment, the TCO continues to apply in relation to the importation into Australia of that capital equipment.

(5) In this section:

made-to-order capital equipment means a particular item of capital equipment:

(a) that is made on a one-off basis to meet a specific order rather than being the subject of regular or intermittent production; and

(b) that is not produced in quantities indicative of a production run.

Division 5—Miscellaneous

Internal review

269SH. (1) Not later than 28 days after gazettal of a decision (the **"original decision"**) on a TCO application or on a request for revocation of a TCO, any affected person within the meaning of subsection (13) who objects to the making of the decision may apply to the CEO for its reconsideration.

(2) An application for reconsideration must:

(a) be in writing; and

(b) include the grounds on which the person objects to the decision (whether or not those grounds had previously been considered).

(3) An application for reconsideration:

(a) must be lodged with the CEO in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and

(b) must have the day of its lodgement recorded.

(3A) As soon as practicable after receiving a request for reconsideration of a decision that leads to the making of a TCO or that refuses to revoke a TCO, the CEO must publish a *Gazette* notice stating:

(a) that the request has been lodged; and

(b) the date that the request was lodged; and

(c) the full particulars of the TCO to which the request relates.

(4) Where application is made for reconsideration of a decision made on a TCO application, the CEO, having regard to:

(a) the TCO application; and

(b) the submissions, information, documents and materials which the CEO was entitled to take into account in considering the TCO application; and

(c) any new matter produced to the CEO by the applicant for reconsideration which, under subsection (7), the CEO is not prevented from taking into account for that purpose;

must decide, not later than 90 days after the last day for lodgement of the application for reconsideration, whether to affirm the original decision or to substitute any other decision that the CEO might have made.

(5) Where application is made for reconsideration of a decision on a request for revocation, the CEO, having regard to:

(a) the request for revocation; and

(b) the information, documents and materials which the CEO was entitled to take into account in considering the request; and

(c) any new matter produced to the CEO by the applicant for reconsideration which, under subsection (7), the CEO is not prevented from taking into account for that purpose;

must decide, not later than 60 days after the last day for lodgement of the application for reconsideration, whether to affirm the original decision or to substitute any other decision that the CEO might have made.

(6) If the CEO fails to make a decision under subsection (4) or (5) within the period referred to in that subsection, the CEO is taken, for the purposes of the reconsideration, at the end of that period, to have made a decision to affirm the original decision.

(7) For the purposes of subsections (4) and (5), the CEO must not take into account any new material that is not produced to him or her by the applicant for reconsideration of an original decision within the period of 28 days after notification of the original decision in the *Gazette*.

(8) Where the CEO, on reconsidering an original decision, decides to substitute for that decision any decision that he or she might have made, the substituted decision is to be taken to have been made when the original decision was made.

(9) If the substituted decision involves the making of a TCO, or of an order revoking a TCO, that TCO or revocation order comes into force on the day on which, if the original decision had involved making the TCO or order revoking a TCO, that TCO or order would have come into force.

(10) As soon as practicable after the CEO makes a decision under subsection (4) or (5) on an application for reconsideration, the CEO must:

(a) by notice in writing inform the applicant for reconsideration of the decision made on the reconsideration; and

(b) by notice published in the *Gazette*, inform all other interested persons of the decision made on that reconsideration.

(11) If the decision on an application for reconsideration has led to the making of an order or orders, the notice of the decision given to the applicant for reconsideration and published in the *Gazette* must include full particulars of the order or orders.

(12) A failure to comply with subsection (10) does not affect the validity of any decision on a reconsideration or of any order or orders to which it has led.

(13) In subsection (1):

"affected person" means:

(a) in relation to a decision on a TCO application:

(i) the applicant for the TCO; or

(ii) any person who lodged a submission before the last day for submissions in relation to the TCO application; or

(iii) any person who, in the opinion of the CEO, was not reasonably able to lodge a submission in relation to the TCO application within 50 days of the gazettal day; and

(b) in relation to a decision on a request for revocation:

(i) the person requesting the revocation; or

(ii) any other person whose interests are affected by the decision made on the request.

Administrative Appeals Tribunal Review of reconsideration decisions

269SHA. (1) For the purpose of an application to the Administrative Appeals Tribunal under section 273GA for review of a decision under subsection 269SH (1) or (4) (a ***reconsideration decision***), application may be made by any person who is an affected person in relation to that decision within the meaning of subsection 269SH (13).

(2) If an affected person applies to the Tribunal for review of a reconsideration decision, the CEO must, as soon as practicable after being notified of the application or of the first such application, publish in the *Gazette*:

(a) particulars of the decision (including any relevant TCO number or TCO application number) in respect of which such an application for review has been made; and

(b) the name of the person who made such an application; and

(c) sufficient particulars to identify the review proceedings before the Tribunal.

(3) Any person who had not applied under section 273GA for review of a reconsideration decision but whose interests are affected by the decision (whether or not that person is an affected person within the meaning of subsection 269SH (13)) may apply under subsection 30 (1A) of the *Administrative Appeals Tribunal Act 1975* to be made a party to the proceedings within 60 days of the publication under subsection (2) or within such further period as the Tribunal allows.

(4) The Tribunal must not grant a person applying to be joined as a party to proceedings for review of a reconsideration decision an extension of the period of 60 days referred to in subsection (3) unless it is satisfied that the person was not reasonably able to apply within the period.

(5) Any document on which a party to proceedings for review of a reconsideration decision before the Administrative Appeals Tribunal intends to rely must, subject to the provisions of the *Administrative Appeals Tribunal Act 1975*:

(a) be filed with the Tribunal; and

(b) be served on the other parties to the proceeding;

not less than 28 days before the date set for hearing, unless the Tribunal makes an order permitting the document to be filed and served within a lesser period or to be introduced at the hearing without being so filed or served.

(6) In deciding whether to make such an order, the Tribunal must have regard to whether there is any reasonable cause for the document not being made available at least 28 days before the date of the hearing.

TCOs not to apply to goods described by reference to their end use or certain goods

269SJ. (1) The CEO must not make a TCO in respect of goods:

(aa) described in terms other than generic terms; or

(a) described in terms of their intended end use; or

(b) declared by the regulations to be goods to which a TCO should not extend.

(1A) Without limiting the meaning of the reference in paragraph (1) (aa) to goods described in generic terms, goods are taken not to be so described if their description, either directly or by implication, indicates that they are goods of a particular brand or model, or that a particular part number applies to the goods.

(2) If a regulation is made for the purposes of paragraph (1) (b) in respect of goods to which a TCO applies, that TCO must be taken, to the extent that it covers those goods, to have been revoked by the CEO on the day those regulations came into effect.

(3) Where a TCO is taken to have been revoked under subsection (2) to the extent that it covers goods the subject of a regulation made for the purposes of paragraph (1) (b), the CEO must, as soon as practicable after the making of the regulation, by notice published in the *Gazette*, inform interested persons:

(a) of the fact that the regulation has been made; and

(b) of its effect on the TCO; and

(c) of the day on which the TCO is taken to have been so revoked.

TCOs not to contravene international agreements

269SK. If the CEO is satisfied that, in accordance with the obligations of Australia under an agreement (including a treaty or convention) between Australia and another country or other countries, the rate of duty attaching to the importation of goods (whether or not the produce of a particular country) is not to be less than a particular minimum rate, the CEO must not make a TCO that would result in a contravention of those obligations.

TCOs not to be statutory rules

269SL. A TCO is not to be taken to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*.

PART XVB—SPECIAL PROVISIONS RELATING TO ANTI-DUMPING DUTIES

Division 1—Preliminary

Definitions

269T. (1) In this Part, unless the contrary intention appears:

"affected party", in relation to an application under section 269Z requesting that the Minister review the rate of interim duty imposed on particular goods, means:

(a) a person who is directly concerned with the exportation to Australia of the goods the subject of the application or who has been directly concerned with the exportation to Australia of like goods; or

(b) a person who is directly concerned with the importation into Australia of the goods the subject of the application or who has been directly concerned with the importation into Australia of like goods; or

(c) a person representing, or representing a portion of, the Australian industry producing like goods; or

(d) the Government of a country from which like goods have been exported to Australia;

"Agreement on Agriculture" means the Agreement by that name:

(a) set out in Annex 1A to the World Trade Organization Agreement; and

(b) as in force on the day on which the World Trade Organization Agreement enters into force for Australia;

"Agreement on Subsidies and Countervailing Measures" means the Agreement by that name:

(a) set out in Annex 1A to the World Trade Organization Agreement; and

(b) as in force on the day on which the World Trade Organization Agreement enters into force for Australia;

"agricultural operations" means:

(a) the cultivation or gathering in of crops; or

(b) the rearing of live-stock; or

(c) the conduct of forestry operations;

and includes:

(d) viticulture, horticulture or apiculture; or

(e) hunting or trapping carried on for the purpose of a business;

"allowable exemption or remission", in relation to exported goods, means:

(a) the exemption of those goods from duties or taxes borne by like goods destined for domestic consumption; or

(b) the remission of such duties or taxes otherwise payable in respect of those goods;

in accordance with the provisions of Article XVI of the General Agreement on Tariffs and Trade 1994 and the provisions of Annexes I, II and III of the Agreement on Subsidies and Countervailing Measures;

"Anti-Dumping Act" means the *Customs Tariff (Anti-Dumping) Act 1975*;

"application", in relation to a dumping duty notice or a countervailing duty notice, means an application for the publication of such a notice;

"Authority" means the Anti-Dumping Authority established by section 4 of the *Anti-Dumping Authority Act 1988*;

"countervailable subsidy" means a subsidy that is, for the purposes of section 269TAAC, a countervailable subsidy;

"countervailing duty" means duty, other than interim countervailing duty:

(a) that is payable on goods under section 10 of the Anti-Dumping Act because of a declaration under subsection 269TJ (1) or (2) of this Act; or

(b) that is payable on goods under section 11 of the Anti-Dumping Act;

"countervailing duty notice" means a notice published by the Minister under subsection 269TJ (1) or (2) or 269TK (1) or (2);

"country of export", in relation to goods exported to Australia, means a country outside Australia from which those goods are exported to Australia, whether or not it is the country where those goods are produced or manufactured;

"country of origin", in relation to goods exported to Australia, means a country, whether the country of export or not, where those goods are produced or manufactured;

"determination" means a determination in writing;

"direction" means a direction in writing;

"dumped goods" means any goods exported to Australia that the Minister has determined, under section 269TACB, have been dumped;

"dumping duty" means duty, other than interim dumping duty, that is payable on goods under section 8 or 9 of the Anti-Dumping Act;

"dumping duty notice" means a notice published by the Minister under subsection 269TG (1) or (2) or 269TH (1) or (2);

"fish" means freshwater or salt-water fish, and includes turtles, dugong, crustacea, molluscs or any other living resources of the sea or of the sea-bed;

"fishing operations" means:

(a) the taking, catching or capturing of fish; or

(b) the farming of fish; or

(c) pearling operations;

"forestry operations" means the felling, in a forest or plantation, of standing timber;

"General Agreement on Tariffs and Trade 1994" means the Agreement by that name:

(a) whose parts are described in Annex 1A to the World Trade Organization Agreement; and

(b) as in force on the day on which the World Trade Organization Agreement enters into force for Australia;

"importation period", in relation to goods that have been the subject of a dumping duty notice or a countervailing duty notice means:

(a) in respect of goods covered by a retrospective notice—the period beginning on the day of entry for home consumption of the first consignment of goods to which the retrospective notice applied and ending immediately before the day of publication of the notice; and

(b) in respect of goods covered by a prospective notice:

(i) the period of 6 months beginning on the day of publication of the prospective notice; and

(ii) each successive period of 6 months;

"importer", in relation to goods exported to Australia, means:

(a) if paragraph (b) or (d) does not apply—the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed; or

(b) if the goods are taken from parts beyond the seas to an Australian resources installation or if they are goods on board an overseas resources installation at the time when it is attached to the Australian seabed—the beneficial owner of the goods at the time when they are imported into Australia; or

(c) if the goods are an overseas resources installation that becomes attached to the Australian seabed—the beneficial owner of the installation at the time when it is imported into Australia; or

(d) if the goods are taken from parts beyond the seas to an Australian sea installation or are goods on board an overseas sea installation at the time when it is installed in an adjacent area or a coastal area—the beneficial owner of the goods at the time when they are imported into Australia; or

(e) if the goods are an overseas sea installation that becomes installed in an adjacent area or in a coastal area—the beneficial owner of the installation at the time when it is imported into Australia;

"interested party", in relation to an application made to the CEO under section 269TB requesting that the Minister publish a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application, means:

(a) the applicant;

(b) a person representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods;

(c) any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and

(d) any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia; and

(e) a trade organisation a majority of whose members are, or are likely to be, directly concerned with the production or manufacture of the goods the subject of the application or of like goods, with their importation or exportation into Australia, or with both of those activities; and

(f) the Government of the country of export or country of origin:

(i) of goods the subject of the application that have been, or are likely to be, exported to Australia; or

(ii) of like goods that have been, or are likely to be, exported to Australia;

"interim countervailing duty" means duty imposed under subsection 10 (3B) or 11 (4) of the Anti-Dumping Act;

"interim dumping duty" means duty imposed under subsection 8 (5) and, where applicable, paragraph 8 (4) (b) of the Anti-Dumping Act or under subsection 9 (5) and, where applicable, paragraph 9 (4) (b) of that Act;

"interim duty" means interim dumping duty or interim countervailing duty;

"investigation period", in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the Comptroller for the purposes of paragraph 269TC (4) (bf) to be the period over which importations of the goods will be examined in order to determine what sort of preliminary finding to make under section 269TD;

"like goods", in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration;

"member country" means a country that is, in its own right, a member of the World Trade Organization established by the World Trade Organization Agreement;

"negative preliminary decision" means a decision of the kind referred to in paragraph 269X (6) (b) or (c);

"new exporter", in relation to goods the subject of an application for a dumping duty notice or a countervailing duty notice or like goods, means an exporter who did not export such goods to Australia at any time during either:

(a) the inquiry period within the meaning of the *Anti-Dumping Authority Act 1988*; or

(b) the investigation period, within the meaning of this part;

that is specified for the purposes of that application;

"positive preliminary decision" means a decision of the kind referred to in paragraph 269X (6) (a);

"production cost", in relation to processed agricultural goods, means the sum of the direct labour costs, the direct material costs and the factory overhead costs incurred in relation to those goods;

"prospective notice" means a notice issued under subsection 269TG (2), 269TH (2), 269TJ (2) or 269TK (2);

"raw agricultural goods" means goods directly obtained by the undertaking of any agricultural operation or any fishing operation;

"residual exporter", in relation to a dumping duty notice or a countervailing duty notice in respect of goods, means an exporter of goods the subject of the application or like goods other than a selected exporter, and includes a new exporter of such goods;

"retrospective notice" means a notice issued under subsection 269TG (1), 269TH (1), 269TJ (1) or 269TK (1).

"selected exporter", in relation to a dumping duty notice or a countervailing duty notice in respect of goods, means an exporter of goods the subject of the application or like goods whose exportations were investigated for the purpose of deciding whether or not to publish that notice;

"subsidy", in respect of goods that are exported to Australia, means:

(a) a financial contribution:

(i) by a government of the country of export or country of origin of those goods; or

(ii) by a public body of that country or of which that government is a member; or

(iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that is made in connection with the production, manufacture or export of those goods and that involves:

(iv) a direct transfer of funds from that government or body to the enterprise by whom the goods are produced, manufactured or exported; or

(v) a direct transfer of funds from that government or body to that enterprise contingent upon particular circumstances occurring; or

(vi) the acceptance of liabilities, whether actual or potential, of that enterprise by that government or body; or

(vii) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body by that enterprise; or

(viii) the provision by that government or body of goods or services to that enterprise otherwise than in the course of providing normal infrastructure; or

(ix) the purchase by that government or body of goods provided by that enterprise; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement or Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit in relation to those goods;

"third country", in relation to goods that have been or may be exported to Australia means a country other than Australia or the country of export, or the country of origin, of those goods;

"World Trade Organization Agreement" means the Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994.

(2) For the purposes of this Part, goods, other than unmanufactured raw products, shall not be taken to have been produced in Australia unless:

(a) the goods were wholly or partly manufactured in Australia; and

(b) not less than one quarter of the factory or works cost of the goods is represented by the sum of:

(i) the value of labour in Australia;

(ii) the value of materials in Australia; and

(iii) the factory overhead expenses incurred in Australia in respect of the goods.

(2A) A reference in this Part to the amount of the export price of goods, to the amount of the normal value of goods, to the amount of the subsidy received in respect of goods or to the amount of freight shall, where that amount is not expressed in Australian currency, be read as a reference to the equivalent amount in Australian currency.

(2AA) A reference in this Part to a subsidy or a countervailable subsidy received in respect of goods from a government of the country of export or country of origin of the goods includes a reference to a subsidy or countervailable subsidy received in respect of those goods:

(a) from a public body of that government or of which that government is a member; or

(b) from a private body entrusted or directed by that government or public body to carry out a governmental function.

(2AB) If a subsidy is constituted by a financial contribution provided by a public body of which a country is a member but is delivered, not by the public body but rather by that member country, then, for the purposes of this Part, that subsidy is taken to have been received both from the public body and from the member country.

(2AC) A subsidy is taken to have been received in respect of particular goods:

(a) whether the benefit conferred by the subsidy is conferred directly or indirectly in relation to those goods; and

(b) whether or not the subsidy involves, or will involve, the payment or grant of any form of financial assistance.

(2AD) The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country.

(2B) For the purposes of this Part, where, during the exportation of goods to Australia, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.

(3) For the purposes of subsection (2), goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.

(4) For the purposes of this Part, if, in relation to goods of a particular kind, there is a person or there are persons who produce like goods in Australia:

(a) there is an Australian industry in respect of those like goods; and

(b) subject to subsection (4A), the industry consists of that person or those persons.

(4A) Where, in relation to goods of a particular kind first referred to in subsection (4), the like goods referred to in that subsection are close processed agricultural goods, then, despite subsection (4), the industry in respect of those close processed agricultural goods consists not only of the person or persons producing the processed goods but also of the person or persons producing the raw agricultural goods from which the processed goods are derived.

(4B) For the purposes of subsection (4A), processed agricultural goods derived from raw agricultural goods are not to be taken to be close processed agricultural goods unless the Minister is satisfied that:

(a) the raw agricultural goods are devoted substantially or completely to the processed agricultural goods; and

(b) the processed agricultural goods are derived substantially or completely from the raw agricultural goods; and

(c) either:

(i) there is a close relationship between the price of the processed agricultural goods and the price of the raw agricultural goods; or

(ii) a significant part of the production cost of the processed agricultural goods, whether or not there is a market in Australia for those goods, is, or would be, constituted by the cost to the producer of those goods of the raw agricultural goods.

(4C) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the production cost of processed agricultural goods to be ascertained for the purpose of subsection (4B), the production cost of those goods is such amount as is determined by the Minister having regard to all relevant information.

(4D) In this Act, a reference to variable factors relevant to the determination of duty payable under the Anti-Dumping Act on particular goods the subject of a dumping duty notice or a countervailing duty notice is a reference:

(a) if the goods are the subject of a dumping duty notice—to the normal value and export price of the goods; and

(b) if the goods are the subject of a countervailing duty notice:

(i) to the amount of countervailable subsidy received in respect of the goods; and

(ii) to the export price of the goods.

(4E) In this Act, a reference to variable factors relevant to the determination of interim duty payable on goods the subject of a dumping duty notice or a countervailing duty notice is a reference:

(a) if the goods are the subject of a dumping duty notice—to the normal value, export price and non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice; and

(b) if the goods are the subject of a countervailing duty notice:

(i) to the amount of countervailable subsidy received in respect of the goods; and

(ii) to the non-injurious price of the goods;

as ascertained, or last ascertained, by the Minister for the purpose of the notice.

(5) A reference in this Act to goods the subject of an application under section 269TB is a reference to goods referred in the application:

(a) that have been imported into Australia;

(b) that are likely to be so imported; or

(c) that may be so imported, being like goods to goods to which paragraph (a) or (b) applies.

(5A) For the purposes of this Part, the weighted average of prices, values, costs or amounts in relation to goods over a particular period is to be worked out in accordance with the following formula:

$$\frac{P_1 Q_1 + P_2 Q_2 + \ldots + P_n Q_n}{Q_1 + Q_2 + \ldots + Q_n}$$

where:

"P_1, $P_2 \ldots P_n$" means the price, value, cost or amount, per unit, in respect of the goods in the respective transactions during the period;

"Q_1, $Q_2 \ldots Q_n$" means the number of units of the goods involved in each of the respective transactions.

(5B) In working out the number of units of goods involved in a transaction, any units of goods that are, for the purposes of paragraph 269TAB (1) (b) or (c), subsection 269TAB (3), paragraph 269TAC (2) (c) or (4) (e) or subsection 269TAC (6), treated as being involved in a particular transaction are taken to be actually involved in the transaction.

(6) Sundays and public holidays shall, notwithstanding the definition of "days" in section 4 be counted as days for the purpose of computing a period for the purposes of this Part but nothing in this subsection shall derogate from the operation of section 36 of the *Acts Interpretation Act 1901*.

Anti-dumping measures not to apply to goods of New Zealand origin

269TAAA. **(1)** This Part, so far as it relates to duty that may become payable under section 8 or 9 of the Anti-Dumping Act, does not apply to goods that are the produce or manufacture of New Zealand.

(2) In subsection (1):

"goods" includes goods imported into Australia before the commencement of this section.

Member countries, developing countries and special developing countries

269TAAB. **(1)** The Minister may certify that a particular country is, or was, during a specified period or on a specified day:

(a) a member country of the World Trade Organization; or

(b) a developing country, whether a member country or not; or

(c) a special developing country within the meaning of subsection (2).

(2) For the purposes of subsection (1), a country is, or was, during a specified period or on a specified day, a special developing country if:

(a) it is or was, during that period or on that day, a developing country; and

(b) it is or was, during that period or on that day:

(i) a least developed country, whether a member country or not; or

(ii) a member country that has eliminated and not restored export subsidies; or

(iii) a member country referred to in paragraph (b) of Annex VII of the Agreement on Subsidies and Countervailing Measures having a gross national product of less than $US1,000 per annum per head of population.

(3) For all purposes of this Part and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified, except so far as the contrary is established.

Definition—countervailable subsidy

269TAAC. (1) For the purposes of this Part, a subsidy is a countervailable subsidy if:

(a) it is specific; and

(b) it is not an excluded subsidy.

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:

(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or

(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if access to the subsidy:

(a) is established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) those criteria or conditions do not favour particular enterprises over others and are economic in nature; and

(c) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) Despite the fact that access to a subsidy is established by objective criteria, the Minister may, having regard to:

(a) the fact that the subsidy program benefits a limited number of particular enterprises; or

(b) the fact that the subsidy program predominantly benefits particular enterprises; or

(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or

(d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

(5) In making a determination under subsection (4), the Minister must take account of:

(a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and

(b) the length of time during which the subsidy program has been in operation.

(6) A subsidy is an excluded subsidy if the Minister is satisfied that:

(a) it is specific but described in paragraph (a), (b) or (c) of Article 8.2 of the Agreement on Subsidies and Countervailing Measures; or

(b) it is a domestic support measure that meets the criteria or conditions set out in Annex 2 to the Agreement on Agriculture.

Ordinary course of trade

269TAAD. (1) If the Minister is satisfied, in relation to goods exported to Australia:

(a) that like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period:

(i) for home consumption in the country of export; or

(ii) for exportation to a third country;

at a price that is less than the cost of such goods; and

(b) that it is unlikely that the seller of the goods will be able to recover the cost of such goods within a reasonable period;

the price paid for the goods referred to in paragraph (a) is taken not to have been paid in the ordinary course of trade.

(2) For the purposes of this section, sales of goods at a price that is less than the cost of such goods are taken to have occurred in substantial quantities during an extended period if the volume of sales of such goods at a price below the cost of such goods over that period is not less than 20% of the total volume of sales over that period.

(3) Costs of goods are taken to be recoverable within a reasonable period of time if, although the selling price of those goods at the time of their sale is below their cost at that time, the selling price is above the weighted average cost of such goods over the investigation period.

(4) The cost of goods is worked out by adding:

(a) the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and

(b) the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.

(5) Amounts determined by the Minister for the purposes of paragraphs (4) (a) and (b) must be worked out in such manner, and taking account of such factors, as the regulations provide in respect of those purposes.

Arms length transactions

269TAA. (1) For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:

(a) there is any consideration payable for or in respect of the goods other than their price; or

(b) the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

(c) in the opinion of the Minister the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

(2) Without limiting the generality of subsection (1), where:

(a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and

(b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;

the Minister may, for the purposes of paragraph (1) (c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.

(3) In determining, for the purposes of subsection (2), whether goods are sold by an importer at a loss, the Minister shall have regard to:

(a) the amount of the price paid or to be paid for the goods by the importer; and

(b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods; and

(c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and

(d) such other matters as the Minister considers relevant.

(4) For the purposes of this Part, 2 persons shall be deemed to be associates of each other if, and only if:

(a) both being natural persons:

(i) they are connected by a blood relationship or by marriage or by adoption; or

(ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;

(b) both being bodies corporate:

(i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or

(ii) both of them together control, directly or indirectly, a third body corporate; or

(iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them; or

(c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate); or

(d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or

(e) they are members of the same partnership.

Export price

269TAB. (1) For the purposes of this Part, the export price of any goods exported to Australia is:

(a) where:

(i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and

(ii) the purchase of the goods by the importer was an arms length transaction;

the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation; or

(b) where:

(i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and

(ii) the purchase of the goods by the importer was not an arms length transaction; and

(iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer;

the price at which the goods were so sold by the importer to that person less the prescribed deductions; or

(c) in any other case—the price that the Minister determines having regard to all the circumstances of the exportation.

(2) A reference in paragraph (1) (b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to:

(a) any duties of Customs or sales tax paid or payable on the goods; and

(b) any costs, charges or expenses arising in relation to the goods after exportation; and

(c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1) (b), is to be regarded as the rate of profit on the sale by the importer.

(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

(4) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.

(5) Paragraphs (1) (a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.

Normal value of goods

269TAC. (1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(2) Subject to this section, where the Minister:

(a) is satisfied that:

(i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or

(ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);

(b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);

the normal value of the goods for the purposes of this Part is:

(c) except where paragraph (d) applies, the sum of:

(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and

(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the ad-

ministrative, selling and general costs associated with the sale and, subject to subsection (13), the profit on that sale; or

(d) if the Minister directs that this paragraph applies—the price determined by the Minister to be the price paid for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country.

(3) The price determined under paragraph (2) (d) is a price that the Minister determines, having regard to the quantity of like goods sold as described in paragraph (2) (d) at that price, is representative of the price paid in such sales.

(4) Subject to subsections (6) and (8), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding subsections because the Government of the country of export:

(a) has a monopoly, or substantial monopoly, of the trade of the country; and

(b) determines or substantially influences the domestic price of goods in that country;

the normal value of the goods for the purposes of this Part is to be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:

(c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions;

(d) a value equal to the price determined by the Minister to be the price of like goods produced or manufactured in a country determined by the Minister and sold in the ordinary course of trade in arms length transactions for exportation from that country to a third country determined by the Minister to be an appropriate third country;

(e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:

(i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;

(ii) such amounts as the Minister determines to be the administrative, selling and general costs associated with the sale of like goods in that country and the profit on that sale;

(f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arms length transactions.

(5) The price determined under paragraph (4) (d) is a price that the Minister determines, because of the quantity of like goods sold as described in paragraph (4) (d) at that price, is representative of the price paid in such sales.

(5A) Amounts determined:

(a) to be the cost of production or manufacture of goods under subparagraph (2) (c) (i) or (4) (e) (i); and

(b) to be the administrative, selling and general costs in relation to goods under subparagraph (2) (c) (ii) or (4) (e) (ii);

must be worked out in such manner, and taking account of such factors, as the regulations provide for the respective purposes of paragraphs 269TAAD (4) (a) and (b).

(5B) The amount determined to be the profit on the sale of goods under subparagraph (2) (c) (ii) or (4) (e) (ii), must be worked out in such manner, and taking account of such factors, as the regulations provide for that purpose.

(5C) Without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of paragraph (2) (d) or (4) (d), the Minister may have regard to the following matters:

(a) whether the volume of trade from the country of export referred to in paragraph (2) (d) or the country first-mentioned in paragraph (4) (d) is similar to the volume of trade from the country of export to Australia; and

(b) whether the nature of the trade in goods concerned between the country of export referred to in paragraph (2) (d) or the country first-mentioned in paragraph (4) (d) is similar to the nature of trade between the country of export and Australia.

(6) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections, the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

(7) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.

(8) Where the normal value of goods exported to Australia is the price paid for like goods and that price and the export price of the goods exported:

(a) relate to sales occurring at different times; or

(b) are not in respect of identical goods; or

(c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;

that price paid for like goods is to be taken to be that price paid adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

(9) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2) (c) or (4) (e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

(10) Where:

(a) the actual country of export of goods exported to Australia is not the country of origin of the goods; and

(b) the Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this Part as if the country of origin were the country of export;

he or she may direct that the normal value of the goods is to be so ascertained.

(11) For the purposes of subsection (10), the country of origin of goods is:

(a) in the case of unmanufactured raw products—the country of which they are products; or

(b) in any other case—the country in which the last significant process in the manufacture or production of the goods was performed.

(13) Where, because of the operation of section 269TAAD, the normal value of goods is required to be determined under subsection (2), the Minister shall not include in his or her calculation of that normal value any profit component under subparagraph (2) (c) (ii).

(14) If:

(a) application is made for a dumping duty notice or a countervailing duty notice; and

(b) goods the subject of the application are exported to Australia; but

(c) the volume of sales of like goods for home consumption in the country of export by the exporter or another seller of like goods is less than 5% of the volume of goods the subject of the application that are exported to Australia by the exporter;

the volume of sales referred to in paragraph (c) is taken, for the purposes of paragraph (2) (a), to be a low volume unless the Minister is satisfied that it is still large enough to permit a proper comparison for the purposes of assessing a dumping margin under section 269TACB.

Non-injurious price

269TACA. The non-injurious price of goods exported to Australia is the minimum price necessary:

(a) if the goods are the subject of, or of an application for, a dumping duty notice under subsection 269TG (1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG (1) (b) or (2) (b); or

(b) if the goods are the subject of, or of an application for, a third country dumping duty notice under subsection 269TH (1) or (2)—to prevent the injury, or a recurrence of the injury, referred to in paragraph 269TH (1) (b) or (2) (b); or

(c) if the goods are the subject of, or of an application for, a countervailing duty notice under subsection 269TJ (1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TJ (1) (b) or (2) (b); or

(d) if the goods are the subject of, or of an application for, a third country countervailing duty notice under subsection 269TK (1) or (2)—to prevent the injury, or a recurrence of the injury, referred to in paragraph 269TK (1) (b) or (2) (b).

Working out whether dumping has occurred and levels of dumping

269TACB. (1) If:

(a) application is made for a dumping duty notice; and

(b) export prices in respect of goods the subject of the application exported to Australia during the investigation period have been established in accordance with section 269TAB; and

(c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC;

the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.

(2) In order to compare those export prices with those normal values, the Minister may, subject to subsection (3):

(a) compare the weighted average of export prices over the investigation period with the weighted average of corresponding normal values over that period; or

(b) compare the export prices determined in respect of individual transactions over the investigation period with the corresponding normal values determined over that period; or

(c) use the method of comparison referred to in paragraph (a) in respect of a part or parts of the investigation period and the method of comparison referred to in paragraph (b) in respect of another part or other parts of that period.

(3) If the Minister is satisfied:

(a) that the export prices differ significantly among different purchasers, regions or periods; and

(b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period;

the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period.

(4) If, in a comparison under subsection (2), the Minister is satisfied that the weighted average of export prices over a period is less than the weighted average of corresponding normal values over that period:

(a) the goods exported to Australia during that period are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods is the difference between those weighted averages.

(5) If, in a comparison under subsection (2), the Minister is satisfied that an export price in respect of an individual transaction during the investigation period is less than the corresponding normal value:

(a) the goods exported to Australia in that transaction are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods is the difference between that export price and that normal value.

(6) If, in a comparison under subsection (3), the Minister is satisfied that the export prices in respect of particular transactions during the investigation period are less than the weighted average of corresponding normal values during that period:

(a) the goods exported to Australia in each such transaction are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.

(7) Subject to subsection (8), the existence of dumping and the size of a dumping margin will normally be worked out for individual exporters of goods to Australia.

(8) If the number of exporters from a particular country of export who provide information in relation to an application for a dumping duty notice is so large that it is not practicable to determine the existence of dumping and to work out individual dumping margins for each of them, the Minister may, on the basis of information obtained from an investigation of a selected number of those exporters:

(a) who constitute a statistically valid sample of those exporters; or

(b) who are responsible for the largest volume of exportations to Australia that can reasonably be investigated;

decide whether dumping exists, and, if it does, fix dumping margins for such selected exporters and for exporters who are not so selected.

(9) If information is submitted by an exporter not initially selected under subsection (8) for the purposes of an investigation, the investigation must extend to that exporter unless to so extend it would prevent the investigation's timely completion.

(10) Any comparison of export prices, or weighted average of export prices, with any corresponding normal values, or weighted average of corresponding normal values, must be worked out in respect of similar units of goods, whether determined by weight, volume or otherwise.

Working out whether benefits have been conferred and amounts of subsidy

269TACC. (1) If:

(a) a financial contribution referred to in paragraph (a) of the definition of "subsidy" in subsection 269T (1); or

(b) income or price support referred to in paragraph (b) of that definition;

is received in respect of goods, the question whether that financial contribution or income or price support confers a benefit, and, if so, the amount of subsidy attributable to that benefit, are to be worked out according to this section.

(2) If a financial contribution in respect of goods is a direct financial payment received from a government of a country, a public body of that government or of which that government is a member, or a private body entrusted or directed by that government or public body to carry out a governmental function, a benefit is taken to be conferred because of that payment.

(3) If:

(a) there is no financial contribution of the kind referred to in subsection (2) received in respect of goods; but

(b) a financial contribution of another kind, or income or price support, is received in respect of those goods from a government of a country, a public body of that government or of which that government is a member, or a private body entrusted or directed by that government or public body to carry out a governmental function;

the question whether that financial contribution or income or price support confers a benefit is to be determined by the Minister.

(4) In determining whether a financial contribution confers a benefit, the Minister must have regard to the following guidelines:

(a) the provision of equity capital from the government or body referred to in subsection (3) does not confer a benefit unless the decision to provide the capital is inconsistent with normal investment practice of private investors in the country concerned;

(b) the making of a loan by the government or a body referred to in subsection (3) does not confer a benefit unless the loan requires repayment of a lesser amount than would be required for a comparable commercial loan;

(c) the guarantee of a loan by the government or a body referred to in subsection (3) does not confer a benefit unless, without the guarantee, the enterprise receiving the loan would have to repay a greater amount;

(d) the provision of goods or services by the government or body referred to in subsection (3) does not confer a benefit unless the goods or services are provided for less than adequate remuneration;

(e) the purchase of goods by the government or body referred to in subsection (3) does not confer a benefit if the purchase is made for more than adequate remuneration.

(5) For the purposes of paragraphs (4) (d) and (e), the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.

(6) If a benefit is conferred:

(a) by a financial contribution in the form referred to in subsection (2)—the total amount of subsidy attributable to the benefit is an amount equal to the payment; or

(b) by the making of a loan by the government or a body referred to in subsection (3)—the total amount of subsidy attributable to the benefit is an amount equal to the difference between the amount required to be repaid on that loan and the amount that would be required to be repaid on a comparable commercial loan; or

(c) by the guarantee of a loan by the government or a body referred to in subsection (3)—the total amount of subsidy attributable to the benefit is an amount equal to the difference between the amount required to be repaid upon the loan so guaranteed and the amount that would be required to be repaid upon a commercial loan, without that guarantee, adjusted for any difference in fees; or

(d) by any other financial contribution, or income or price support as referred to in subsection (3)—the total amount of subsidy attributable to the benefit is an amount determined by the Minister, in writing, in accordance with the regulations made for the purposes of this section.

(7) If the Minister is satisfied, in respect of a particular financial contribution or form of income or price support:

(a) that subsections (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred; or

(b) that, if a benefit has been conferred, subsection (6) is inappropriate for determining the total amount of subsidy attributable to the benefit;

the Minister may determine, in writing, that he or she is so satisfied and determine an alternative basis for deciding whether a benefit has been conferred or for working out the amount of subsidy attributable to the benefit.

(8) If the number of exporters from a particular country of export who provide information in relation to an application for a countervailing duty notice is so large that it is not practicable to work out

whether a benefit has been conferred and the amount of subsidy received by them, the Minister may, on the basis of information obtained from an investigation of a selected number of those exporters:

(a) who constitute a statistically valid sample of those exporters; or

(b) who are responsible for the largest volume of exportations to Australia that can reasonably be investigated;

decide whether a benefit is conferred and, if it is, the amount of subsidy attributable to that benefit for such selected exporters and for exporters who are not so selected.

(9) If information is submitted by an exporter not initially selected under subsection (8) for the purposes of an investigation, the investigation must extend to that exporter unless to so extend it would prevent the investigation's timely completion.

(10) After the total amount of the subsidy received in respect of goods has been worked out, the Minister must, if that subsidy is not quantified by reference to a unit of those goods determined by weight, volume or otherwise, work out how much of that amount is properly attributable to each such unit.

Material injury to industry

269TAE. (1) In determining, for the purposes of section 269TG or 269TJ, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A), (2B) and (2C), have regard to:

(aa) if the determination is being made for the purposes of section 269TG—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and

(ab) if the determination is being made for the purposes of section 269TJ—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and

(a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and

(b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and

(c) any change or likely change, during a particular period, in the proportion that:

(i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or

(ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia;

bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

(d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and

(e) the difference between:

(i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and

(ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and

(f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and

(g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and

(h) if the determination is being made for the purposes of section 269TJ and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.

(2) In determining, for the purposes of section 269TH or 269TK, whether material injury to an industry in a third country has been or is being caused or is threatened or would or might have been caused because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A), (2B) and (2C), have regard to:

(aa) if the determination is being made for the purposes of section 269TH—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and

(ab) if the determination is being made for the purposes of section 269TK—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and

(a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and

(b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and

(c) any change or likely change, during a particular period, in the proportion that:

(i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or

(ii) the quantity of goods of that kind, or like goods, produced or manufactured in the third country and sold or consumed in Australia;

bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

(d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and

(e) the difference between:

(i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and

(ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and

(f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and

(g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.

(2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:

(a) the volume and prices of imported like goods that are not dumped; or

(b) the volume and prices of importations of like goods that are not subsidised; or

(c) contractions in demand or changes in patterns of consumption; or

(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or

(e) developments in technology; or

(f) the export performance and productivity of the Australian industry;

and any such injury or hindrance must not be attributed to the exportation of those goods.

(2B) In determining:

(a) for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry; or

(b) for the purposes of subsection (2), whether or not material injury is threatened to an industry in a third country;

because of the exportation of goods into the Australian market, the Minister must take account only of such changes in circumstances, including changes of a kind determined by the Minister, as would make that injury foreseeable and imminent unless dumping or countervailing measures were imposed.

(2C) In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportation of like goods to Australia by different exporters from the same country of export or from different countries of export, the Minister should consider the cumulative effect of those exportations only if, having regard to:

(a) the conditions of competition between those goods; and

(b) the conditions of competition between those goods and like goods that are domestically produced;

the Minister is satisfied that it is appropriate to do so.

(3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to an industry in a third country, in relation to goods of a particular kind exported to Australia is a reference to:

(a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry; and

(b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods; and

(c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:

(i) for which there are sales or forward orders; or

(ii) which are held as stocks; and

(d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry; and

(e) the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods; and

(f) the level of return on investment in the industry; and

(g) cash flow in the industry; and

(h) the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods; and

(j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry; and

(k) the ability of persons engaged in the industry, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and

(m) investment in the industry.

Currency conversion

269TAF. **(1)** If, for the purposes of this Part, comparison of the export prices of goods exported to Australia and corresponding normal values of like goods requires a conversion of currencies, that conversion, subject to subsection (2), is to be made using the rate of exchange on the date of the transaction or agreement that, in the opinion of the Minister, best establishes the material terms of the sale of the exported goods.

(2) If, in relation to goods exported to Australia, a forward rate of exchange is used, the Minister may, in a conversion of currencies under subsection (1), make use of that rate of exchange.

(3) If:

(a) the comparison referred to in subsection (1) requires the conversion of currencies; and

(b) the rate of exchange between those currencies has undergone a short-term fluctuation;

the Minister may, for the purpose of that comparison, disregard that fluctuation.

(4) If:

(a) the comparison referred to in subsection (1) requires the conversion of currencies; and

(b) the Minister is satisfied that the rate of exchange between those currencies has undergone a sustained movement;

the Minister may, by notice published in the *Gazette*, declare that this subsection applies with effect from a day specified in the notice and, if the Minister does so, the Minister may use the rate of exchange in force on that day for the purposes of that comparison during the period of 60 days starting on that day.

(5) Nothing in subsection (4) prevents the Minister specifying a day in a notice that is earlier than the day of publication of the notice if the day specified:

(a) is a day after the start of the sustained movement; and

(b) is not a day occurring within 60 days after the day specified in a prior notice.

(6) Nothing in subsection (4) prevents the Minister publishing more than one notice if a sustained movement in the rate of exchange continues for more than 60 days.

(7) The Comptroller may, if he or she considers it desirable so to do for the avoidance of doubt, specify, by notice published in the *Gazette*, a means of establishing a rate that is taken to be, or to have been, the rate of exchange between the Australian currency and another currency or between other currencies:

(a) on a day, or during a period, preceding the day of publication of the notice; or

(b) from and including the day of publication of the notice, or an earlier day specified in the notice, until the revocation of the notice.

(8) The rate of exchange established between currencies in a notice under subsection (7) is, for the purpose of working out the amount of duty or interim duty payable on any goods exported on the day or during the period to which the rate so specified applies, the rate of exchange that applies for the purposes of this section in respect of the currencies specified in the notice.

Revocation of notices

269TAJ. (1) The Minister may, by public notice, revoke a notice published by the Minister under this Part and must do so if satisfied that, were the notice not in force, the Minister would not be authorised by this Part to cause the notice to be published.

(2) The Minister may, by public notice, partly revoke a notice published by the Minister under this Part and must do so if satisfied that, if the notice had not applied to such goods, the Minister would not be authorised to cause a notice applying to such goods to be published.

(3) The Minister may, by public notice, release or partly release a person from an undertaking entered into under this Part.

(4) A notice of revocation under subsection (1) or of partial revocation under subsection (2) has effect from a date specified in the notice, which may be a date earlier than the date of publication of the notice of revocation or partial revocation in the *Gazette*.

(5) A notice releasing or partly releasing a person from an undertaking under subsection (3) has effect from a date specified in the notice, which may be a date earlier than the date of publication of the notice in the *Gazette*.

(6) Upon the revocation of a notice that declared that a section of the Anti-Dumping Act applies to goods, the special duty on the goods ceases to be payable, and shall not be charged or collected on goods entered for home consumption on or after the date of effect of the notice of revocation.

(7) Upon the partial revocation of a notice that declared that a section of the Anti-Dumping Act applies to goods, the special duty on the goods to which the notice no longer applies ceases to be payable, and shall not be charged or collected on such goods entered for home consumption on or after the date of effect of the partial revocation.

Minister may give directions to CEO in relation to powers and duties under this Part

269TA. (1) The Minister may give to the CEO such written directions in connection with carrying out or giving effect to the CEO's powers and duties under this Part as the Minister thinks fit, and the CEO shall comply with any directions so given.

(2) A direction under subsection (1) shall not deal with carrying out or giving effect to the powers or duties of the CEO in relation to a particular consignment of goods or to like goods to goods in a particular consignment but shall deal instead with the general principles for carrying out or giving effect to the CEO's powers.

(3) Where the Minister gives a direction to the CEO, the Minister shall:

(a) cause a written notice setting out particulars of the direction to be published in the *Gazette* as soon as practicable after giving the direction; and

(b) cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice in the *Gazette*.

(4) A notice setting out particulars of a direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 2—Consideration of anti-dumping matters by the CEO

Application for action under Anti-Dumping Act

269TB. (1) Where:

(a) a consignment of goods:

(i) has been imported into Australia;

(ii) is likely to be imported into Australia; or

(iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies;

(b) there is, or may be established, an Australian industry producing like goods; and

(c) a person believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

that person may, by application in writing lodged with the Customs in accordance with subsection (5), request that the Minister publish that notice in respect of the goods in the consignment.

(2) Where:

(a) a consignment of goods produced or manufactured in a country other than Australia:

(i) has been imported into Australia;

(ii) is likely to be imported into Australia; or

(iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies; and

(b) there is, in a third country, an industry that produces or manufactures like goods for export to Australia; and

(c) the Government of that third country believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

the Government of that third country may, by application in writing lodged with the Customs in accordance with subsection (5), request that the Minister publish that notice in respect of the goods in the consignment.

(2A) During the period after receiving an application for a dumping duty notice and before giving public notice under subsection 269TC (4) of a decision not to reject the application, the Comptroller must notify the government of the country, or of each country, whose exporters are nominated in the application.

(2B) During the period after receiving an application for a countervailing duty notice and before giving public notice under subsection 269TC (4) of a decision not to reject the application, the Comptroller must notify:

(a) the government of the country, or of each country, whose exporters are nominated in the application; and

(b) the government of any other country from which countervailable subsidies are alleged to have been received.

(2C) A notification by the Comptroller under subsection (2B) must include an invitation to consult with the Comptroller in relation to whether:

(a) any countervailable subsidies exist; and

(b) any such subsidies, if found to exist, are causing or are likely to cause material injury of a kind referred to in paragraph 269TJ (1) (b) or 269TK (1) (b);

with the aim of arriving at a mutually agreed solution.

(3) An applicant may, at any time before a preliminary finding is made under section 269TD in respect of the application, by notice in writing lodged with the Customs in accordance with subsection (4), withdraw the application in whole or in part.

(4) An application under subsection (1) or (2) or a notice under subsection (3) withdrawing such an application must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such information as the form requires; and

(d) be signed in the manner indicated in the form; and

(e) in the case of an application under subsection (1)—be supported by a sufficient part of the domestic industry.

(5) An application, or a notice withdrawing an application, may be lodged with the Customs:

(a) by giving it to an officer doing duty in relation to the receipt of dumping applications; or

(b) by posting it by pre-paid post to a postal address specified by Customs in the approved form; or

(c) by sending it by electronic facsimile to a facsimile number specified by Customs in the approved form;

and the application or notice is taken to have been received by Customs when the application or notice, or a facsimile of the application or notice, is first received by an officer doing duty in relation to the receipt of dumping applications.

(6) An application under subsection (1) in relation to a consignment of goods is taken to be supported by a sufficient part of the domestic industry if the Comptroller is satisfied that persons (including the applicant) who produce or manufacture like goods in Australia and who support the application:

(a) account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and

(b) account for not less than 25% of the total production or manufacture of like goods in Australia.

Consideration of application

269TC. (1) The CEO shall, within 25 days, or, if another period is prescribed, within that other period, after Customs receives an application under subsection 269TB (1) in respect of goods, examine the application and, if the CEO is not satisfied, having regard to the matters contained in the application and to any other information that the CEO considers relevant:

(a) that the application complies with subsection 269TB (4); or

(b) that there is, or is likely to be established, an Australian industry in respect of like goods; or

(c) that there appear to be reasonable grounds:

(i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or

(ii) for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

(2) The CEO shall, within 25 days, or, if another period is prescribed, within that other period, after Customs receives an application by the Government of a country under subsection 269TB (2) in respect of goods, examine the application and, if the CEO is not satisfied, having regard to the matters contained in the application and to any other information that the CEO considers relevant:

(a) that the application complies with subsection 269TB (4); or

(b) that there is a producer or manufacturer of like goods in that country who exports such goods to Australia; or

(c) that there appear to be reasonable grounds:

(i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or

(ii) for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

(2A) If an applicant, after lodging an application under section 269TB, decides to give Customs further information in support of that application without having been requested to do so:

(a) the information may be lodged with Customs, in writing, in accordance with section 269TB; and

(b) the information is taken to have been received by Customs in accordance with subsection 269TB (5); and

(c) this Part has effect as if:

(i) the application had included that further information; and

(ii) the application had only been lodged when that further information was lodged; and

(iii) the application had only been received when that further information was received.

(3) Where, in accordance with subsection (1) or (2), the CEO rejects an application, the notice informing the applicant of that rejection:

(a) shall state the reasons why the CEO was not satisfied of one or more of the matters set out in that subsection; and

(b) shall inform the applicant of the applicant's right to refer the decision of the CEO in respect of the matters in respect of which the CEO was not so satisfied to the Authority for review.

(4) If the CEO decides not to reject an application under subsection 269TB (1) or (2) in respect of goods, the CEO must give public notice of the decision:

(a) setting out particulars of those goods; and

(b) setting out the identity of the applicant; and

(ba) setting out the countries of export known to be involved; and

(bb) if the application is for a countervailing duty notice—also setting out the countries from which countervailable subsidisation is alleged to have been received; and

(bc) setting a date, which should be the date or estimated date of publication of the notice in the *Gazette*, as the date of initiation of the investigation; and

(bd) indicating the basis on which dumping or countervailable subsidisation is alleged to have occurred; and

(be) summarising the factors on which the allegation of injury or hindrance to the establishment of an industry is based; and

(bf) indicating that the preliminary finding will be made on the basis of the examination of exportations to Australia of goods the subject of the application during a period identified in the notice; and

(c) stating that, within a specified period after the date of initiation of the investigation, being the period of 120 days or, if another period is prescribed by regulations for the purposes of this paragraph, that other period, the CEO will make a preliminary finding as to whether there are sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods; and

(d) stating that a preliminary finding that there are or will be such grounds may result in the imposition of provisional measures including the taking of securities under section 42 of this Act for the period specified in subsection 45 (2) of this Act in respect of interim duty that may become payable on the importation of the goods the subject of the application; and

(e) inviting interested parties to lodge with the CEO, within a specified period of not more than 40 days after the date of initiation of the investigation, submissions concerning the publication of the notice sought by the applicant; and

(f) indicating the address at which, or the manner in which, such submissions can be lodged.

(5) Information required to be included in the notice under subsection (4) may be included in a separate report to which the notice makes reference.

(6) Despite the fact that a notice under this section specifies a particular period for interested parties to lodge submissions with the Comptroller, if the Comptroller is satisfied, by representation in writing by an interested party:

(a) that a longer period is reasonably required for the party to make a submission; and

(b) that allowing a longer period will be practicable in the circumstances;

the Comptroller may notify the party, in writing, that a specified further period will be allowed for the party to lodge a submission.

(7) As soon as practicable after the Comptroller decides not to reject an application under section 269TB for a dumping duty notice or a countervailing duty notice, the Comptroller must ensure that a copy of the application, or of so much of the application as is not claimed to be confidential or to constitute information whose publication would adversely affect a person's business or commercial interests, is made available:

(a) unless paragraph (b) applies—to all persons known to be exporters of goods the subject of the application and to the government of each country of export; or

(b) if the number of persons known to be exporters of goods the subject of the application is so large that it is not practicable to provide a copy of the application, or of so much of the application as is not the subject of such a claim, to each of them—to the government of each country of export and to each relevant trade association.

Preliminary findings

269TD. (1) After the end of the period for lodging submissions in respect of an application for the imposition of dumping duty or countervailing duty but before the end of the period referred to in paragraph 269TC (4) (c), the CEO shall consider the application, taking into account any submissions received and any other matters that the CEO considers relevant.

(2) If, as a result of that consideration of the application, the CEO makes a preliminary finding that there are sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods:

(a) the CEO must give public notice of that finding; and

(b) the CEO shall, within 7 days of publication of that notice in the *Gazette*, refer the question whether the publication of the notice sought in the application is so justified to the Authority; and

(c) the CEO may, if he or she thinks it appropriate to do so, upon the importation of goods to which the application relates, require and take securities under section 42 of this Act in respect of interim duty that may become payable.

(2A) If the Comptroller decides to require securities under paragraph (2) (c), the Comptroller must give public notice of the decision.

(3) If, as a result of that consideration of the application, the CEO makes a preliminary finding that there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods, the CEO must give public notice of that finding.

Termination of investigations

Comptroller must terminate if all dumping margins are negligible

269TDA. (1) If:

(a) application is made for a dumping duty notice; and

(b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Comptroller is satisfied that:

(i) there has been no dumping by the exporter of any of those goods; or

(ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%;

the Comptroller must terminate the investigation so far as it relates to the exporter.

Comptroller must terminate if countervailable subsidisation is negligible

(2) If:

(a) application is made for a countervailing duty notice; and

(b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Comptroller is satisfied that:

(i) no countervailable subsidy has been received in respect of any of those goods; or

(ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time after the start of the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);

the Comptroller must terminate the investigation so far as it relates to the exporter.

Comptroller must terminate if negligible volumes of dumping are found

(3) If:

(a) application is made for a dumping duty notice; and

(b) in an investigation for the purposes of the application the Comptroller is satisfied that the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and

(ii) that have been, or may be, dumped;

is negligible;

the Comptroller must terminate the investigation so far as it relates to that country.

What is a negligible volume of dumped goods?

(4) For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:

(a) when expressed as a percentage of the total Australian import volume, it is less than 3%; and

(b) subsection (5) does not apply in relation to those first-mentioned goods.

Aggregation of volumes of dumped goods

(5) For the purposes of subsection (4), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped if:

(a) the volume of such goods that have been, or may be, so exported from that country and dumped, when expressed as a percentage of the total Australian import volume, is less than 3%; and

(b) the volume of goods the subject of the application that have been, or may be, exported to Australia over that period from another country of export and dumped, when expressed as a percentage of the total Australian import volume, is also less than 3%; and

(c) the total volume of goods the subject of the application that have been, or may be, exported to Australia over that period from the country to which paragraph (a) applies, and from all countries to which paragraph (b) applies, and dumped, when expressed as a percentage of the total Australian import volume, is more than 7%.

Negligible dumping margins to count in determining volume

(6) The fact that the dumping margin, or each of the dumping margins, in relation to a particular exporter, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%, does not prevent exports by that exporter being taken into account:

(a) in working out the total volume of goods that have been, or may be, exported from a country of export and dumped; and

(b) in aggregating, for the purposes of subsection (5), the volumes of goods that have been, or may be, exported from that country of export and other countries of export and dumped.

Comptroller must terminate if negligible volumes of countervailable subsidisation are found

(7) If:

(a) application is made for a countervailing duty notice; and

(b) in an investigation for the purposes of the application, the Comptroller is satisfied that the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia from a particular country of export during a reasonable examination period; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

is negligible;

the Comptroller must terminate the investigation so far as it relates to that country.

What is a negligible volume of subsidised goods?

(8) For the purposes of subsection (7), the total volume of goods the subject of the application for a countervailing duty notice that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been received is taken to be a negligible volume if:

(a) that country of export is not a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 3%; or

(b) that country of export is a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 4%;

and subsections (9), (10) and (11) do not apply in relation to those first-mentioned goods.

Aggregation of volumes of subsidised goods from countries other than developing countries

(9) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has, or may be, been received, if:

(a) the country of export is not a developing country; and

(b) the volume of such goods:

(i) that have been, or may be, exported to Australia over that period from that country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 3%; and

(c) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from another country that is not a developing country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is also less than 3%; and

(d) the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is more than 7%.

Aggregation of volumes of subsidised goods from developing countries

(10) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:

(a) the country of export is a developing country; and

(b) the volume of such goods:

(i) that have been, or may be, exported to Australia over that period from that country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

(c) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from another country that is a developing country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is also less than 4%; and

(d) the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and

(ii) in respect of which a countervailable subsidy has been received;

when expressed as a percentage of the total Australian import volume, is more than 9%.

Aggregation of volumes of subsidised goods from member countries that are developing countries

(11) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:

(a) the country of export is a member country and a developing country; and

(b) the volume of such goods;

(i) that have been, or may be exported to Australia over that period from that country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

(c) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from another member country that is a developing country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

(d) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is more than 9%.

Negligible countervailable subsidies to count in determining volume

(12) The fact that the level of countervailable subsidy that has been, or may be, received in respect of goods that have been, exported, or may be exported, to Australia from a country of export is a negligible level under subsection (16) does not prevent exports from that country being taken into account:

(a) in working out the total volume of goods that have been, or may be, exported from a country of export and in respect of which a countervailable subsidy has been, or may be, payable; and

(b) in aggregating, for the purposes of subsection (9), (10) or (11), volumes of goods that have been, or may be, exported to Australia from that country and other countries and in respect of which a countervailing subsidy has been, or may be, received.

Comptroller must terminate investigation if dumping causes negligible injury

(13) If:

(a) application is made for a dumping duty notice; and

(b) in an investigation, for the purposes of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the Comptroller is satisfied that:

(i) there has been, or may be, dumping of some or all of those goods; but

(ii) the injury, if any, to an Australian industry or an industry in a third country, or the hindrance, if any, to the establishment of an Australian industry, that has been, or may be, caused by that dumping is negligible;

the Comptroller must terminate the investigation so far as it relates to that country.

Comptroller must terminate investigation if subsidisation causes negligible injury

(14) If:

(a) application is made for a countervailing duty notice; and

(b) in an investigation, for the purpose of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the Comptroller is satisfied that:

(i) a countervailable subsidy has been, or may be, received in respect of some or all of those goods; but

(ii) the injury, if any, to an Australian industry or an industry in a third country has been, or may be, caused by the subsidisation is negligible;

the Comptroller must terminate the investigation so far as it relates to that country.

Comptroller must give public notice of termination decisions

(15) If the Comptroller decides to terminate an investigation so far as it relates to a particular exporter or country of export, the Comptroller must:

(a) give public notice of that decision; and

(b) ensure that:

(i) in the case of an exporter, a copy of the notice is sent to the applicant, the exporter and the government of the country of export; or

(ii) in the case of a country of export, a copy of the notice is sent to the applicant and the government of that country.

Negligible countervailable subsidisation

(16) For the purposes of this section, a countervailable subsidy received in respect of goods exported to Australia is negligible if:

(a) the country of export is not a developing country and the subsidy, when expressed as a percentage of the export price of the goods, is less than 1%; or

(b) the country of export is a developing country but not a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2%; or

(c) the country of export is a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 3%.

Definition—reasonable examination period

(17) In this section:

"reasonable examination period", in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period comprising:

(a) the whole or a substantial part of the investigation period; or

(b) any period after the end of the investigation period that is taken into account for the purpose of considering possible future importations of goods the subject of the application;

"total Australian import volume", in relation to a volume of goods the subject of an application for a dumping duty notice or a countervailing duty notice that have been, or may be, exported to Australia from a particular country during a period, means the total volume of all goods the subject of the application and like goods that have been, or may be, exported to Australia from all countries during that period.

CEO to have regard to same considerations as Minister in certain circumstances

269TE. (1) Where the CEO:

(a) in making a decision under section 269TC to accept or reject an application in relation to the goods the subject of the application; or

(b) in making a preliminary finding under section 269TD in relation to those goods;

is required to determine any matter ordinarily required to be determined by the Minister under the Anti-Dumping Act in respect of those goods, the CEO:

(c) must determine the matter in like manner as if he or she was the Minister; and

(d) must have regard to the same considerations (other than the considerations referred to in subsection 8 (5A), 8 (5B), 9 (5A), 10 (3C), 10 (3D) or 11 (5) of that Act, whichever is appropriate) to which the Minister would be required to have regard under that Act if the Minister were determining the matter.

(2) Subsection (1) applies in respect of goods that have not, at the time of the CEO's determination of a matter in respect of those goods, been imported into Australia, as if the CEO's determination of the matter were being made after an importation of those goods into Australia, being an importation occurring at the time of the anticipated importation of those goods into Australia.

(3) Nothing in subsection (1) shall be taken to imply that the determination of a matter by the CEO affects the power of the Minister to make a final determination in respect of that matter for the purposes of the Anti-Dumping Act.

Reviews by Authority

269TF. (1) Application may be made to the Authority by a person who has lodged an application under section 269TB in a manner and form approved by the Authority for the purposes of this subsection, and within a period prescribed for the purposes of this subsection, for the review by the Authority of:

(a) a decision by the CEO under subsection 269TC (1) or (2) to reject the application so lodged; or

(b) a decision by the CEO under subsection 269TD (3) to the effect that there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods; or

(c) a decision by the CEO under section 269TDA to terminate an investigation so far as it relates to a particular exporter or country of export.

(2) Where the Authority decides to revoke the decision of the CEO under subsection 269TC (1) or (2) to reject an application and to substitute a decision accepting that application then, with effect from the day that the Authority so decides, this Act shall have effect as if the substituted decision were a decision of the CEO and, accordingly, the CEO shall publish a public notice of the substituted decision.

(3) Where the Authority decides to revoke a preliminary finding of the CEO that under subsection 269TD (3) there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods and to substitute a preliminary finding that there are or will be such grounds then, with effect from the day the Authority so decides, this Act shall have effect as if the substituted finding were a preliminary finding of the CEO the making of which had been duly published in accordance with paragraph 269TD (2) (a), which had been duly referred to the Authority under paragraph 269TD (2) (b) and in respect of which the CEO may exercise the powers specified in paragraph 269TD (2) (c).

(4) If the Authority decides, on a review of a decision to terminate an investigation, to substitute a preliminary finding for the decision to terminate:

(a) this Act has effect, subject to paragraphs (b), (c) and (d), as if the substituted finding were a preliminary finding of the Comptroller; and

(b) the Comptroller must publish a public notice of the substituted finding; and

(c) if the substituted finding is a preliminary finding that there are sufficient grounds for publication of a dumping duty notice or a countervailing duty notice, the substituted finding is to be treated as if it had been duly referred to the Authority under paragraph 269TD (2) (b); and

(d) if the substituted finding is a preliminary finding that there are sufficient grounds for the publication of such a notice, the Comptroller may exercise the powers specified in paragraph 269TD (2) (c).

(5) If the investigation is remitted to the Comptroller, the Comptroller must, for the purpose of the further investigation of that exporter, treat the matter as if he or she had just made a decision under subsection 269TC (4) in respect of the matter and give public notice of a new investigation of the matter accordingly.

(6) For the purpose of any investigation of a matter remitted to the Comptroller, an interested party may request the Comptroller to treat a submission duly made by it in the prior investigation of the matter as a submission made for the purposes of the remitted matter and, where the party does so, the submission must be treated as if duly received for the purpose of the further investigation.

Division 3—Consideration of anti-dumping matters by the Minister

Dumping duties

269TG. (1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:

(a) the amount of the export price of the goods is less than the amount of the normal value of those goods; and

(b) because of that:

(i) material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered; or

(ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 8 of the Anti-Dumping Act—material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;

the Minister may, by public notice, declare that section 8 of that Act applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind, that:

(a) the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and

(b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 8 of the Anti-Dumping Act applies to like goods:

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) the amount of the export price of which is less than the amount of their normal value.

(3) Where:

(a) a notice under subsection (1) declares particular goods to be goods to which section 8 of the Anti-Dumping Act applies; or

(b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;

the notice must, subject to subsection (3A), include a statement of the respective amounts that the Minister ascertained, at the time of publication of the notice:

(c) was or would be the normal value of the goods to which the declaration relates; and

(d) was or would be the export price of those goods; and

(e) was or would be the non-injurious price of those goods.

(3A) If any person who has provided information to assist the Minister to ascertain the normal value, export price or non-injurious price of goods to which a declaration under subsection (1) or (2) relates claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of that value or price would adversely affect the person's business or commercial interests:

(a) in accordance with subsection 269ZI (9) the Minister is not required to include in the notice a statement of that value or price; but

(b) upon request the CEO may notify that value or price to persons who, in the CEO's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

(3B) In ascertaining a normal value and export price for goods of the residual exporter, the Minister must ensure that:

(a) the normal value does not exceed the weighted average of normal values for like goods of selected exporters from the same country of export; and

(b) the export price is not less than the weighted average of export prices for like goods of selected exporters from the same country of export.

(3C) For the purposes of subsection (3B), the weighted average of normal values and the weighted average of export prices of the selected exporters must not include any normal value or export price if:

(a) in a comparison under section 269TACB involving that normal value or export price, the Minister has determined:

(i) that there is no dumping; or

(ii) that the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%; or

(b) that normal value was determined under subsection 269TAC (6) or that export price was determined under subsection 269TAB (3).

(3D) If the export of a consignment of goods to Australia by an exporter has been under consideration by the Minister so as to decide whether or not to publish a dumping duty notice under this section in relation to the goods in the consignment or to like goods, the Minister may give notice, in writing, to the exporter stating that:

(a) the Minister is of the opinion that it would be appropriate for the exporter to give an undertaking in accordance with subsection (4) to the Minister; and

(b) an undertaking, in the terms set out in the notice, would be satisfactory to the Minister.

(4) Whether or not a notice has been given to an exporter, the Minister may defer the decision to publish or not to publish a dumping duty notice covering that exporter, for so long as the Minister considers appropriate, if the exporter offers, and the Minister accepts, an undertaking that the exporter will so conduct future trade to Australia in like goods as to avoid:

(a) causing or threatening material injury to an Australian industry producing like goods; or

(b) materially hindering the establishment of such an Australian industry.

(5) In giving a notice, and in considering the terms of any proposed undertaking, the Minister must have regard to the desirability that any price increase to which the undertaking relates is limited to an amount such that the total price of the goods is not more than the non-injurious price of the goods.

(6) The Minister:

(a) may give a notice under subsection (3D) whether or not the giving of such a notice has been recommended by the Authority in a report under section 7 of the *Anti-Dumping Authority Act 1988*; and

(b) may accept an undertaking whether or not the acceptance of such an undertaking has been recommended by the Authority in a report under section 7 of that Act; and

(c) must not give a notice to an exporter under subsection (3D), or accept an undertaking from an exporter, before a positive preliminary finding has been made that extends to that exporter; and

(d) must give public notice of any undertaking so accepted.

(7) The acceptance by the Minister of an undertaking may be subject to conditions that include, but are not limited to, conditions relating to:

(a) giving the Minister, on an agreed basis, information that is relevant to the fulfilment of the undertaking; and

(b) providing the Minister with appropriate access to such information.

(8) The acceptance by the Minister of an undertaking from an exporter does not prevent the exporter requesting the Minister to determine whether, had the undertaking not been accepted, the Minister would have published a dumping duty notice or would have decided not to publish such a notice.

(9) The Minister must, if an exporter makes such a request, and may, on his or her own initiative, determine whether he or she would have published a dumping duty notice or would have decided not to publish such a notice if the undertaking had not been accepted.

(10) Subsection (9) does not imply that the Minister is required to make a determination under that subsection before the Minister has received a report of the Authority in relation to the matter.

(11) If the Minister determines under subsection (9) that he or she would have decided not to publish a dumping duty notice, the undertaking automatically lapses.

Third country dumping duties

269TH. (1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:

(a) the amount of the export price of the goods is less than the amount of the normal value of the goods; and

(b) because of that:

(i) material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is threatened; or

(ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 9 of the Anti-Dumping Act—material injury to an industry in a third

country engaged in the production or manufacture of like goods would or might have been caused if the security had not been taken;

the Minister, if requested by the Government of the third country so to do, may, by public notice, declare that section 9 of that Act applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that:

(a) the amount of the export price of like goods so produced or manufactured that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods so produced or manufactured that may be exported to Australia in the future may be less than the normal value of the goods; and

(b) because of that, material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is threatened;

the Minister, if requested by the Government of the third country so to do, may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods so manufactured or produced that have been exported to Australia), declare that section 9 of the Anti-Dumping Act applies to like goods so produced or manufactured:

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) the amount of the export price of which is less than the amount of their normal value.

(3) Where:

(a) a notice under subsection (1) declares particular goods to be goods to which section 9 of the Anti-Dumping Act applies; or

(b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;

the notice must, subject to subsection (4), include a statement of the respective amounts that the Minister ascertained at the time of publication of the notice:

(c) was or would be the normal value of the goods to which the declaration relates; and

(d) was or would be the export price of those goods; and

(e) was or would be the non-injurious price of those goods.

(4) If any person who has provided information to assist the Minister to ascertain the normal value, export price or non-injurious price of goods to which a declaration under subsection (1) or (2) relates claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of that value or price would adversely affect the person's business or commercial interests:

(a) in accordance with subsection 269ZI (9), the Minister is not required to include in the notice a statement of that value or price; but

(b) upon request the CEO may notify that value or price to persons who, in the CEO's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

(5) In ascertaining a normal value and export price for goods of the residual exporter, the Minister must ensure that:

(a) the normal value does not exceed the weighted average of normal values for like goods of selected exporters from the same country of export; and

(b) the export price is not less than the weighted average of export prices for like goods of selected exporters from the same country of export.

(6) For the purposes of subsection (5), the weighted average of normal values and the weighted average of export prices of the selected exporters must not include any normal value or export price if:

(a) in a comparison under section 269TACB involving that normal value or export price, the Minister has determined:

(i) that there is no dumping; or

(ii) that the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%; or

(b) that normal value was determined under subsection 269TAC (6) or that export price was determined under subsection 269TAB (3).

Countervailing duties

269TJ. (1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:

(a) a countervailable subsidy has been received in respect of the goods; and

(b) because of that:

(i) material injury to an Australian industry producing like goods has been or is being caused or is threatened or the establishment of an Australian industry producing like goods has been or may be materially hindered; or

(ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 10 of the Anti-Dumping Act—material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;

the Minister may, by public notice, declare that section 10 of that Act applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind that:

(a) a countervailable subsidy:

(i) has been received in respect of goods the subject of the application that have already been exported to Australia; and

(ii) may be received in respect of like goods that may be exported to Australia in the future; and

(b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is being threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 10 of the Anti-Dumping Act applies to like goods:

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) in respect of which a countervailable subsidy is received.

(2A) If the export of a consignment of goods to Australia has been under consideration by the Minister so as to decide whether or not to publish a countervailing duty notice under this section in relation to the goods in the consignment or to like goods, the Minister may give notice, in writing, to the government of the country of export or to the exporter stating that:

(a) the Minister is of the opinion that it would be appropriate for the government or the exporter to give an undertaking in accordance with subsection (3) to the Minister; and

(b) an undertaking, in the terms set out in the notice, would be satisfactory to the Minister.

(3) Whether or not a notice has been given to a government or to an exporter in respect of goods in the consignment or like goods, the Minister may defer the decision to publish or not to publish a countervailing duty notice covering those goods if the Minister is given and accepts an undertaking to which subsection (3A) applies.

(3A) This subsection applies:

(a) to an undertaking given by a government—if it is an undertaking that the government will, in relation to any export trade to Australia in like goods, review any countervailable subsidy delivered by that government and make any changes found to be necessary to avoid:

(i) causing or threatening material injury to an Australian industry producing like goods; or

(ii) materially hindering the establishment of such an Australian industry; and

(b) to an undertaking by a exporter—if it is an undertaking that the exporter will so conduct future trade to Australia in like goods as to avoid:

(i) causing or threatening material injury to an Australian industry producing like goods; or

(ii) materially hindering the establishment of such an Australian industry.

(3B) In giving a notice, and in considering the terms of any proposed undertaking, the Minister must have regard to the desirability that any price increase arising from the undertaking is limited to an amount such that the total price of the goods is not more than the non-injurious price of the goods.

(3C) The Minister:

(a) may give a notice under subsection (2A) whether or not the giving of such a notice is the subject of a recommendation from the Authority in a report under section 7 of the *Anti-Dumping Authority Act 1988*; and

(b) may accept an undertaking whether or not the acceptance of such an undertaking is the subject of a recommendation from the Authority in a report under section 7 of that Act; and

(c) must not:

(i) give a notice to a government or exporter under subsection (2A); or

(ii) accept an undertaking from a government or an exporter;

in respect of particular goods or like goods unless a preliminary finding has been made that there are grounds for publication of a countervailing duty notice in respect of those like goods; and

(d) must not accept an undertaking from an exporter unless the government of the country of export consents to the giving of the undertaking; and

(e) must give public notice of any undertaking so accepted.

(3D) The acceptance by the Minister of an undertaking may be subject to conditions that include, but are not limited to, conditions relating to:

(a) giving the Minister, on an agreed basis, information that is relevant to the fulfilment of the undertaking; and

(b) providing the Minister with appropriate access to such information.

(3E) The acceptance by the Minister of an undertaking from an exporter does not prevent the exporter requesting the Minister to determine whether, had the undertaking not been accepted, the Minister would have published a countervailing duty notice or would have decided not to publish such a notice.

(3F) The Minister must, if an exporter makes such a request, and may, on his or her own initiative, determine whether he or she would have published a countervailing duty notice or would have decided not to publish such a notice if the undertaking had not been accepted.

(3G) Subsection (3F) does not imply that the Minister is required to make a determination under that subsection before the Minister has received a report of the Authority in relation to the matter.

(3H) If the Minister determines under subsection (3F) that he or she would have decided not to publish a countervailing duty notice, the undertaking automatically lapses.

(4) Where the Minister is satisfied that:

(a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties; and

(b) those duties are imposed because it is alleged that a countervailable subsidy is received in respect of goods of that kind; and

(c) those duties are imposed without regard to, or without proper regard to, whether or not material injury to an industry in that country producing like goods has been or is being caused or is

threatened, or the establishment of such an industry in that country has been or may be materially hindered, because of the receipt of that subsidy;

the Minister may, by public notice, declare that section 10 of the Anti-Dumping Act applies to goods specified in the notice:

(d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and

(e) in respect of which a countervailable subsidy is received.

(5) Where the Minister is satisfied that:

(a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties; and

(b) those duties are imposed because it is alleged that:

(i) prescribed assistance is paid or granted, directly or indirectly, in relation to goods of that kind that are exported from Australia to that country; and

(ii) material injury to an industry in that country producing like goods has been or is being caused or is threatened, or the establishment of such an industry in that country has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance; and

(c) prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed has been paid or granted in relation to goods exported from that country to Australia and material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of such an Australian industry has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance;

the Minister may, by public notice, declare that section 10 of the Anti-Dumping Act applies to goods specified in the notice, being goods of a kind mentioned in paragraph (c):

(d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and

(e) in relation to which there is paid or granted prescribed assistance of a kind specified in the notice, being prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed.

(6) Where the Minister is satisfied that:

(a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties; and

(b) those duties are imposed because it is alleged that prescribed assistance is paid or granted, directly or indirectly, in relation to goods of that kind that are exported from Australia to that country; and

(c) those duties are imposed without regard to, or without proper regard to, whether or not material injury to an industry in that country producing like goods has been or is being caused or is threatened, or the establishment of such an industry in that country has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance;

the Minister may, by notice published in the *Gazette*, declare that section 10 of the Anti-Dumping Act applies to goods specified in the notice:

(d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and

(e) in relation to which there is paid or granted prescribed assistance of a kind specified in the notice, being prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed.

(7) A reference in this section to prescribed assistance in relation to goods is a reference to any assistance, incentive, exemption, privilege or benefit (whether financial or otherwise) in relation to goods other than the receipt of a countervailable subsidy in respect of those goods.

(8) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the amount of any subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods to be ascertained for the purpose of this section, that amount is to be taken to be such amount as is determined by the Minister having regard to all relevant information.

(9) If the Minister is satisfied that adequate information as to the amount, cost or value of the prescribed assistance in relation to goods cannot be obtained for the purposes of this section, the amount, cost or value of that prescribed assistance is to be taken to be such amount, cost or value as is determined, in writing, by the Minister.

(10) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales is to be taken to be financial assistance paid to that exporter.

(11) If a notice under subsection (1) or (2) declares particular goods to be goods to which section 10 of the Anti-Dumping Act applies, the notice must, subject to subsection (12), include a statement setting out:

(a) the amount of countervailable subsidy that the Minister ascertained, at the time of publication of the notice, had been or would be received in respect of the goods to which the notice relates; and

(b) the amount that the Minister has ascertained, at that time, was or would be the non-injurious price of the goods.

(12) If any person who has provided information to assist the Minister to ascertain:

(a) the amount of any countervailable subsidy received in respect of goods to which a declaration under subsection (1) or (2) relates; or

(b) the non-injurious price of any goods to which a declaration under subsection (1) or (2) relates;

claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy or of the amount of that non-injurious price would adversely affect the person's business or commercial interests:

(c) in accordance with subsection 269ZI (9), the Minister is not required to include a statement of that amount or that price in the notice; but

(d) upon request the CEO may provide a statement of that amount or that price to persons who, in the CEO's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

Concurrent dumping and subsidy

269TJA. (1) Where the Minister is satisfied, as to any goods that have been exported to Australia:

(a) that the amount of the export price of those goods is less than the amount of the normal value of those goods; and

(b) that a countervailable subsidy has been received in respect of the goods; and

(c) that, because of the combined effect of the difference between the 2 amounts referred to in paragraph (a) and of the subsidy referred to in paragraph (b):

(i) material injury to an Australian industry producing like goods has been or is being caused or is threatened; or

(ii) the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may publish a notice under subsection 269TG (1), a notice under subsection 269TJ (1) or notices under both subsections 269TG (1) and 269TJ (1) at the same time in respect of the same goods.

(2) Where the Minister is satisfied, as to goods of any kind:

(a) that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and

(b) that a countervailable subsidy:

(i) has been received in respect of goods the subject of the application that have already been exported to Australia; and

(ii) may be received in respect of like goods that may be exported to Australia in the future; and

(c) that, because of the combined effect of the difference referred to in paragraph (a) and of the subsidy referred to in paragraph (b):

(i) material injury to an Australian industry producing like goods has been or is being caused or is being threatened; or

(ii) the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may publish a notice under subsection 269TG (2), a notice under subsection 269TJ (2) or notices under both subsections 269TG (2) and 269TJ (2) at the same time in respect of the same goods.

(3) If the Minister has had under consideration the export of a consignment of goods to Australia with a view to determining whether or not notices should be published in accordance with subsection (1) or (2), under both section 269TG and 269TJ in respect of the same goods, the Minister may defer the decision to publish or not to publish notices under both of those sections covering the exporter concerned if he or she is given and accepts:

(a) an undertaking by the exporter under section 269TG, and an undertaking by the exporter under section 269TJ, in respect of the same goods; or

(b) an undertaking by the exporter under section 269TG and an undertaking by the government of the country of origin, or of the country of export, of the goods in the consignment under section 269TJ.

(4) If, in respect of the same consignment of goods, the Minister accepts 2 undertakings from the exporter of the goods or an undertaking from the exporter of the goods and an undertaking from the government of the country of origin or country of export of the goods, the Minister must be satisfied that the combined effect of the undertakings is not greater than is necessary to prevent material injury or the recurrence of material injury to an Australian industry producing like goods or to remove the actual or possible hindrance to the establishment of such an Australian industry.

Third country countervailing duties

269TK. (1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:

(a) a countervailable subsidy has been received in respect of the goods; and

(b) because of that:

(i) material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is being threatened; or

(ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under this section—material injury to an industry in a third country engaged in the

production or manufacture of like goods would or might have been caused if the security had not been taken;

the Minister, if requested by the Government of the third country so to do, may, by public notice, declare that section 11 if the Anti-Dumping Act applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that:

(a) a countervailable subsidy:

(i) has been received in respect of goods the subject of the application that have already been exported to Australia; and

(ii) may be received in respect of like goods that may be exported to Australia in the future; and

(b) by reason thereof material injury to an industry in a third country engaged in the production of like goods has been or is being caused or is being threatened;

the Minister, if requested by the Government of the third country so to do, may, by public notice (whether or not he or she has made, or makes, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 11 of the Anti-Dumping Act applies to like goods:

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) in respect of which a countervailable subsidy is received.

(3) If the Minister is satisfied that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods cannot be obtained for the purposes of this section, the amount of subsidy, bounty, reduction or remission of freight or other financial assistance is to be taken to be such amount as is determined, in writing, by the Minister.

(4) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales is to be taken to be financial assistance paid to the exporter.

(5) Where a notice under subsection (1) or (2) declares particular goods to be goods to which section 11 of the Anti-Dumping Act applies, the notice must, subject to subsection (6), include a statement setting out:

(a) the amount of countervailable subsidy that the Minister ascertained, at the time of publication of the notice, had been or would be received in respect of the goods to which the notice relates; and

(b) the amount that the Minister ascertained, at that time, was or would be the non-injurious price of the goods.

(6) If any person who has provided information to assist the Minister to ascertain:

(a) the amount of any countervailable subsidy received in respect of goods to which a notice under subsection (1) or (2) relates; or

(b) the non-injurious price of such goods;

claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy or of the amount of that non-injurious price would adversely affect the person's business or commercial interests:

(c) in accordance with subsection 269ZI (9), the Minister is not required to include a statement of that amount or that price in the notice; but

(d) upon request the CEO may provide a statement of that amount or that price to persons who, in the CEO's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

Minister to give public notice not to impose duty

269TL. (1) Where the Minister receives a recommendation from the Anti-Dumping Authority concerning the imposition of dumping duty, third country dumping duty, countervailing duty or third country countervailing duty on particular goods or on goods of a like kind to particular goods and the Minister decides, after having regard to that recommendation, not to declare those goods to be goods to which section 8, 9, 10 or 11, as the case requires, of the Anti-Dumping Act applies, the Minister must give public notice to that effect.

(2) If the Minister receives a report from the Authority recommending the termination of an inquiry so far as a particular exporter is concerned and the Minister decides, having regard to that recommendation, not to declare goods exported to Australia by that exporter to be goods to which section 8, 9, 10 or 11 of the Anti-Dumping Act applies, the Minister must give public notice to that effect.

Periods during which certain notices and undertakings to remain in force

269TM. **(1)** Where a notice is published after section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences under a relevant notification provision in respect of goods of a particular kind, that notice expires 5 years after the day on which it is published unless it is revoked before the end of that period.

(2) Where an undertaking is entered into after section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences under a relevant undertaking provision in respect of goods of a particular kind, that undertaking expires 5 years after the day on which it was entered into unless provision is made for its earlier expiration.

(3) If:

(a) a notice was or is published before section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences; and

(b) the notice is in force immediately before the commencement of that section;

the notice expires 5 years after the day on which it was published unless it is sooner revoked.

(3A) If:

(a) an undertaking was or is entered into before section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences; and

(b) the undertaking is in force immediately before that section commences;

the Minister must, by notice in writing, give the person who gave the undertaking the opportunity, before the undertaking expires, to extend the undertaking so that it expires 5 years after the day on which it was entered into unless provision is made for its earlier expiration.

(3B) If a person who gave an undertaking of the kind referred to in subsection (3A) refuses or fails to extend its operation in the manner referred to in subsection (3A) before the undertaking expires, the Minister may, in substitution for the extension of the undertaking, publish a dumping duty notice or a countervailing duty notice that commences on the day after the undertaking expired and ends 2 years after that day unless it is sooner revoked.

(7) In this section:

"relevant notification provision" means subsection 269TG (2), 269TH (2), 269TJ (2), (4), (5) or (6) or 269TK (2);

"relevant undertaking provision" means subsection 269TG (4) or 269TJ (3).

Retrospective notices

269TN. (1) Subject to this section, the Minister must not cause a notice to be published under subsection 269TG (1), 269TH (1), 269TJ (1) or 269TK (1) in respect of goods that have been entered for home consumption.

(2) Subsection (1) does not prevent the publication of a notice under subsection 269TG (1), 269TH (1), 269TJ (1) or 269TK (1) in respect of goods that have been entered for home consumption in relation to which security has been taken under section 42 in respect of any interim duty that might become payable under section 8, 9, 10 or 11 of the Anti-Dumping Act, as the case may be (not being security that has been cancelled), by reason of the publication of such a notice or in relation to which the Customs had the right to require and take such security (not being security that would have been cancelled under this Act if it had been taken).

(3) Subsection (1) does not prevent the publication of a notice under subsection 269TG (1) in respect of goods that have been entered for home consumption to which, by virtue of subsection (4) of this section, this subsection applies, if:

(a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in respect of any interim duty that might be payable on goods of the same kind under section 8 of the Anti-Dumping Act or, within that period, the Customs had the right to require and take such security; and

(b) material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind, being injury arising by reason of the amount of the export price of the goods exported being less than the amount of the normal value of the goods exported, and the Minister considers that the publication of the notice is necessary to prevent the recurrence of the injury.

(4) Subsection (3) applies to goods:

(a) that have been imported into Australia by an importer who knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and that by reason thereof material injury would be caused to an Australian industry; or

(b) that are goods of a kind the exportation of which to Australia on a number of occasions has caused, or, but for the publication of a notice under section 269TG in respect of goods of that kind, would have caused, material injury to an Australian industry by reason of the amount of the export price of the goods exported being less than the normal value of the goods exported.

(4A) Before the Minister decides to publish a dumping duty notice under subsection 269TG (1) in circumstances referred to in subsection (3) of this section, in respect of goods that have already been entered for home consumption, the Minister must:

(a) inform the importer of the goods of the decision he or she proposes to make; and

(b) allow a reasonable opportunity for the importer of the goods to comment on the proposed decision; and

(c) give consideration to the comment provided by the importer.

(5) Subsection (1) does not prevent the publication of a notice under subsection 269TJ (1) in respect of goods that have been entered for home consumption if:

(a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in respect of any interim duty that might be payable on goods of the same kind under section 10 of the Anti-Dumping Act or, within that period, the Customs had the right to require and take such security; and

(b) material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind because a countervailable subsidy has been received from the country of export or country of origin of those goods.

(6) Where:

(a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with subsection 269TG (4) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 8 of the

Anti-Dumping Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TG (1) of this Act in respect of goods that:

(c) have been exported by the exporter;

(d) are of the kind to which the undertaking relates; and

(e) have been entered for home consumption on a day that:

(i) was not earlier than the day on which that act or omission occurred; and

(ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(7) Where:

(a) the Minister is satisfied that an act or omission of the Government of a country that has given an undertaking in accordance with subsection 269TJ (3) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 10 of the Anti-Dumping Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TJ (1) in respect of goods that:

(c) are the produce or manufacture of that country or have been exported from that country, as the case may be; and

(d) are of the kind to which the undertaking relates; and

(e) have been entered for home consumption on a day that:

(i) was not earlier than the day on which that act or omission occurred; and

(ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(8) Where:

(a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with subsection 269TJ (3) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 10 of the

Anti-Dumping Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TJ (1) in respect of goods that:

(c) have been exported by the exporter; and

(d) are of the kind to which the undertaking relates; and

(e) have been entered for home consumption on a day that:

(i) was not earlier than the day on which that act or omission occurred; and

(ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

Power to specify goods

269TP. A notice under subsection 269TG (2), 269TH (2), 269TJ (2) or 269TK (2) in respect of a kind of goods, may, without limiting the generality of those provisions be expressed to apply to:

(a) goods of that kind exported from a particular country; or

(b) goods of that kind exported by a particular exporter.

Inquiries in relation to undertakings

269U. (1) Where the Minister is considering, in relation to goods the subject of an application under section 269TB:

(a) whether to give a notice, in accordance with paragraph 269TG (4) (a), to the exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry; or

(b) whether to give a notice, in accordance with paragraph 269TJ (3) (a), to the Government of the country of origin, or of the country of export, of the goods in the consignment or to the exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry;

the CEO may authorize an officer in writing to convene a meeting of representatives of the Australian industry for the purpose of obtaining information and submissions from those representatives in relation to the question what terms of undertaking should be set out in the notice, if it is to be given, as the terms that may be satisfactory to the Minister.

(2) An officer authorized under subsection (1) to convene a meeting of representatives of an Australian industry shall give notice in writing to such persons as, in his opinion, represent the Australian industry, setting out:

(a) the day, time and place for the convening of the meeting; and

(b) the question to be considered by the meeting.

(3) The officer convening a meeting in pursuance of subsection (2):

(a) shall preside at the meeting; and

(b) may adjourn the meeting from time to time.

(4) At a meeting of representatives of an Australian industry convened in pursuance of subsection (2), the representatives attending the meeting may provide information, or make submissions, to the officer convening the meeting in relation to the question being considered by the meeting.

(5) Nothing in subsection (4) shall be taken to prevent a representative of an Australian industry who attends a meeting convened in pursuance of subsection (2) from providing information or making a submission, in relation to the question considered or to be considered at the meeting, to the officer convening the meeting otherwise than at the meeting or to the Minister.

(6) The officer convening a meeting in pursuance of subsection (2) may, subject to subsection (7), put before the meeting information in relation to the question being considered by the meeting.

(7) The officer convening a meeting in pursuance of subsection (2) shall not put before the meeting any information provided to him by another person that is information of a confidential nature (whether or not confidentiality was claimed in respect of the information by the person who provided the information).

(8) After the close of a meeting convened in pursuance of subsection (2), the officer convening the meeting shall furnish to the CEO for submission to the Minister a report in writing of the information provided and the submissions made at the meeting.

(9) Nothing in this section shall be taken, for the purposes of subsection 51 (1) of the *Trade Practices Act 1974*, to authorize any act or thing other than the providing of information or the making of a submission, at a meeting of representatives of an Australian industry convened in pursuance of subsection (2), by a representative of the Australian industry to the officer convening the meeting in relation to the question being considered by the meeting.

Division 4—Dumping duty or countervailing duty assessment

Importers may apply for duty assessment in certain circumstances

269V. (1) An importer of goods on which, under the Anti-Dumping Act, an interim duty has been paid may, subject to subsection (2), by application lodged with the CEO, request that the Minister make an assessment of the liability of those goods to duty under that Act.

(2) An application for an assessment of duty under subsection (1) may only be made if:

(a) the application is made not more than 6 months after the end of the particular importation period in which the goods the subject of the application were entered for home consumption; and

(b) the importer contends that the total amount of duty payable in respect of those goods under the Anti-Dumping Act is less, by a specified amount, than the total amount of interim duty that has been paid on those goods under that Act.

Manner of making applications for duty assessment

269W. (1) An application for an assessment of duty on goods of a particular kind entered for home consumption during a particular importation period must be in writing and contain:

(a) a full description of the goods of that kind in each consignment imported during the particular importation period; and

(b) information concerning the amount of interim duty paid on the goods of that kind in each such consignment; and

(c) if an interim dumping duty has been imposed—a statement of the amounts that, in the opinion of the applicant, are the normal value and the export price of goods of that kind in each such consignment and information to establish those amounts; and

(d) if an interim countervailing duty has been imposed—a statement of the amounts that, in the opinion of the applicant, are:

(i) the amount of the countervailable subsidy received on goods of that kind in each such consignment; and

(ii) the amount of the export price of goods of that kind in each such consignment;

and information to establish those amounts; and

(e) a statement of the amount by which the applicant contends that the total interim duty paid on those goods exceeds the total duty payable under the Anti-Dumping Act.

(2) An application must be lodged with the CEO:

(a) by leaving it at a place that has been allocated for lodgment of duty assessment applications at Customs House in Canberra; or

(b) by posting it by pre-paid post to a postal address notified by Customs in the *Gazette*; or

(c) by sending it by electronic facsimile to a facsimile number notified by Customs in the *Gazette*;

and the application is taken to have been lodged when the application, or a facsimile of the application, is first received by an officer of Customs doing duty in relation to final duty assessment applications.

(3) The day on which an application is taken to have been lodged must be recorded on the application.

Consideration of duty assessment applications

269X. (1) The CEO must, as soon as practicable after the lodgment of an application for assessment of duty in respect of goods that were entered for home consumption during a particular importation period but not more than 180 days after the lodgment of that application, examine the application and decide what recommendation to make to the Minister under subsection (6).

(2) If the CEO considers that any person (including the applicant) may be able to supply information relevant to the consideration of the application, the CEO may, by notice in writing, request the supply of that information, in writing:

(a) if the information is sought from a person other than the applicant—within a period specified in the notice ending not later than 150 days after the lodgment of the application; and

(b) if the information is sought from the applicant—within a period specified in the notice ending not later than 180 days after the lodgment of the application.

(3) Where the Comptroller proposes to take into account any relevant information that was not supplied to the Comptroller by the applicant, the Comptroller must:

(a) give the applicant a copy of the information that he or she proposes to take into account unless, in the opinion of the Comptroller, the provision of that information would adversely affect the business or commercial interests of a person supplying the information; and

(b) invite the applicant, within a specified period ending not later than 180 days after the lodgment of the application, to make any further submission the applicant considers appropriate in relation to that information.

(4) If a person refuses or fails to supply information or to make a submission within the period allowed but subsequently supplies that information or makes that submission, the CEO may disregard that information or submission in considering the application.

(5) On the basis of the information contained in the application, any other information provided under subsection (2) or (3) that is not disregarded under subsection (4) and any other information the CEO considers relevant, the CEO must:

(a) provisionally ascertain, in relation to each consignment of goods to which the application relates, each variable factor relevant to the determination of duty payable on the goods under the Anti-Dumping Act; and

(b) having regard to those variable factors as so provisionally ascertained and, where appropriate, to the non-injurious price of goods of that kind—provisionally calculate, in respect of each such consignment, the amount of duty payable under the Anti-Dumping Act.

(6) On the basis of the provisional calculation of duty referred to in paragraph (5) (b), the CEO must decide:

(a) if satisfied that the total interim duty paid on the goods the subject of the application exceeds the total duty payable under the Anti-Dumping Act by at least the amount contended in the application—to recommend to the Minister:

(i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and

(ii) that the Minister order a repayment of the amount of interim duty overpaid; or

(b) if satisfied that the total interim duty paid on the goods the subject of the application exceeds the total duty payable under the Anti-Dumping Act but not to the extent contended in the application—to recommend to the Minister:

(i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and

(ii) that the Minister order a repayment of the amount of interim duty overpaid; or

(c) if satisfied that the total amount of duty payable under the Anti-Dumping Act on the goods the subject of the application is equal to or exceeds the total of interim duty that was paid on the goods—to recommend to the Minister:

(i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; but

(ii) that the Minister order that any duty in excess of the interim duty paid on those goods be waived.

(7) As soon as practicable, but not later than 7 days after making a decision under subsection (6), the CEO must:

(a) notify the applicant, in writing, of the decision made; and

(b) if the decision is a negative preliminary decision:

(i) inform the applicant of the reasons why the CEO made the decision; and

(ii) inform the applicant of the applicant's right, within 28 days of the day of notification of the decision, to refer the decision to the Authority for review.

(8) The CEO must:

(a) if he or she has made a positive preliminary decision—recommend to the Minister, not later than 7 days after making the decision, that the Minister give effect to that decision; and

(b) if he or she has made a negative preliminary decision and the applicant has not exercised the right to seek a review of the decision by the Authority—recommend to the Minister, not later than 7 days after the end of the period available for seeking review of the decision, that the Minister give effect to that decision.

Duty assessments

269Y. (1) As soon as practicable after receiving a recommendation from the CEO or from the Authority in relation to goods the subject of an application, the Minister must, having regard to the terms of that recommendation, by notice in writing:

(a) ascertain, for the purposes of this Act and the Anti-Dumping Act, the variable factors relevant to the determination of duty payable under the Anti-Dumping Act in respect of each consignment; and

(b) order that the total interim duty overpaid in respect of all consignments to which the application relates be repaid or that the total unpaid duty in excess of the interim duty already paid be waived, as the case requires.

(2) As soon as practicable after issuing a notice under subsection (1) the Minister must ensure that a copy of that notice is provided to the applicant.

(3) If the Minister issues a notice under subsection (1) ordering that an amount of interim duty be repaid to an applicant the Commonwealth is liable to make a repayment to the applicant accordingly.

(4) If:

(a) one or more consignments of goods of a particular kind that are the subject of a dumping duty notice or a countervailing duty notice are entered for home consumption during an importation period; and

(b) interim duty is paid on those goods under the Anti-Dumping Act; and

(c) application is not made under section 269V of this Act for an assessment of duty payable on those goods under the Anti-Dumping Act;

then:

(d) the Minister is taken, for the purposes of this Act and the Anti-Dumping Act, to have ascertained each variable factor relevant to the determination of duty on each such consignment at the level at which that factor was ascertained or last ascertained by the Minister for the purpose of the dumping duty notice or countervailing duty notice; and

(e) the interim duty paid on those goods is taken to be the duty payable.

Division 5—Review of interim duty

Circumstances in which review may be sought

269Z. (1) If:

(a) a dumping duty notice or a countervailing duty notice has been published in respect of goods; and

(b) an affected party considers that it is appropriate to review the rate of interim duty imposed on goods of that kind because one or more of the variable factors relevant to the determination of interim duty has changed;

the affected party may, by application lodged with the CEO, request a review of the rate of interim duty.

(2) If:

(a) a dumping duty notice or a countervailing duty notice has been published in respect of goods; and

(b) the Minister considers that it may be appropriate to vary the rate of interim duty because one or more of the variable factors relevant to the determination of interim duty may have changed;

the Minister may, at any time, by notice in writing, request the CEO to review the rate of interim duty.

(3) An application under subsection (1) must not be made earlier than 12 months after:

(a) the day of publication of the dumping duty notice or countervailing duty notice to which the application relates; or

(b) if a review has, or reviews have, already been undertaken under subsection (1) or (2)—the day on which the Minister published the result of the last such review to be undertaken.

Application for review of interim duty by affected party

269ZA. (1) An application under subsection 269Z (1) for review of interim duty must be in writing and contain:

(a) a description of the kind of goods to which the dumping duty notice or countervailing duty notice the subject of the application relates; and

(b) a statement of the variable factor or factors relevant to the determination of interim duty that, in the opinion of the applicant, have changed; and

(c) a statement of the amount by which each such factor has changed and information to establish that amount.

(2) An application may be lodged with Customs:

(a) by leaving it at a place that has been allocated for lodgment of review applications at Customs House in Canberra; or

(b) by posting by pre-paid post to a postal address specified by Customs in the *Gazette*; or

(c) by sending it by electronic facsimile to a facsimile number specified by Customs in the *Gazette*;

and the application is taken to have been lodged when the application, or a facsimile of the application, is first received by an officer of Customs doing duty in relation to applications for review of interim duty.

(3) The day on which an application is taken to have been lodged must be recorded on the application.

Consideration of the application or request for review

269ZB. (1) As soon as practicable after:

(a) the lodgment of an application under subsection 269Z (1); or

(b) the receipt of a request under subsection 269Z (2);

but not later than 25 days after the lodgment of the application or receipt of the request, the CEO must publish a notice in the *Gazette* and in a newspaper circulating in all States and internal Territories stating that it is proposed to review the rate of interim duty attaching to the goods the subject of the application or request.

(2) The notice must invite interested parties to make submissions within a period of 40 days after the day of publication of the notice.

(3) The CEO may disregard any submission received after the end of that period.

(4) The CEO must, not later than 100 days after the day of publication of the notice, after considering the application for review any submissions made and any other material he or she considers relevant, give the Minister a report recommending:

(a) that the rate of interim duty remain as originally calculated; or

(b) that the rate of interim duty be altered;

and setting out the CEO's reasons for so recommending.

Minister to consider recommendations

269ZC. (1) After considering the recommendation of the CEO and the reasons for that recommendation, the Minister must, subject to subsection (2) by notice in writing published in the *Gazette*:

(a) declare that, with effect from the day of publication of the notice, this Act and the Anti-Dumping Act are taken to have had effect as if the Minister had, in the dumping duty notice or countervailing duty notice, as the case requires, fixed each of the variable factors relevant to the determination of interim duty at the respective amounts specified in the notice; or

(b) declare that, for the purposes of this Act and the Anti-Dumping Act, each of the variable factors relevant to the determination of interim duty is to remain unchanged;

and where the Minister does so, he or she must notify the applicant accordingly.

(2) If the applicant or any other person who has provided information for the purpose of a review under this Division claims, in writing, that the information is confidential or that the inclusion in a notice under subsection (1) of a particular variable factor relevant to the determination of interim duty would adversely affect the person's business or commercial interests:

(a) the Minister is not required to include in the notice a statement of that factor; but

(b) upon request the CEO may notify that factor to persons who, in the opinion of the CEO, would be affected parties in any further review of the rate of interim duty.

(3) If the Minister publishes a declaration under paragraph (1) (a), this Act has effect, with effect from the day of publication of the declaration, as if each of the variable factors relevant to the determination of interim duty as so fixed under that paragraph had been ascertained for the purpose of the dumping duty notice or the countervailing duty notice.

Effect of review of interim duty on entitlement to seek duty assessment

269ZD. If, as a result of the review of a rate of interim duty, that rate is altered with effect from a particular day, that does not affect in any way the entitlement of an importer to apply under section 269V for a final assessment of the duty payable on goods imported into Australia on or after that day.

Division 6—Accelerated review of dumping duty notices or countervailing duty notices for residual exporters

Circumstances in which accelerated review may be sought

269ZE. (1) If a dumping duty notice or a countervailing duty notice has been published:

(a) in respect of goods exported from a particular country of export; or

(b) in respect of goods exported by residual exporters from a particular country of export;

a residual exporter from that country (other than such an exporter in respect of whom a declaration has already been made under subparagraph 269ZG (3) (b) (ii) in respect of a previous application) may, by application lodged with the Comptroller, request an accelerated review of that notice in so far as it affects that exporter.

(2) If the Comptroller is satisfied that:

(a) because that exporter refused to co-operate, in relation to the application for publication of that notice, the exportations of that exporter were not investigated; or

(b) the exporter is related to an exporter who was a selected exporter in relation to the application for publication of that notice;

the Comptroller may reject the application.

(3) If, during the course of an accelerated review, the Comptroller becomes satisfied that:

(a) the exporter is refusing to co-operate with any aspect of the review; or

(b) the exporter is related to an exporter who was a selected exporter in relation to the application for publication of that notice;

the Comptroller may terminate the review.

(4) For the purposes of this section, an exporter is taken to be related to another exporter who is a selected exporter if the 2 exporters are associates of each other under subsection 269TAA (4).

Application for accelerated review

269ZF. (1) An application for accelerated review must be in writing, be lodged in accordance with subsection (2), and contain:

(a) a description of the kind of goods to which the dumping duty notice or countervailing duty notice relates; and

(b) a statement of the basis on which the exporter considers that the particular notice is inappropriate so far as the exporter is concerned.

(2) An application may be lodged with Customs:

(a) by leaving it at a place allocated for lodgment of accelerated review applications; or

(b) by posting it by pre-paid post to a postal address specified by Customs in the *Gazette*; or

(c) by sending it by electronic facsimile to a number specified by Customs in the *Gazette*;

and the application is taken to be lodged when the application, or a facsimile of it, is first received by an officer of Customs doing duty in relation to such applications.

(3) The day on which an application is taken to be lodged must be recorded on the application.

Consideration of application

269ZG. (1) The Comptroller must, after considering the application and making such inquiries as the Comptroller thinks appropriate, give the Minister a report recommending:

(a) that the dumping duty notice or countervailing duty notice the subject of the application remain unaltered; or

(b) that the dumping duty notice or countervailing duty notice the subject of the application be altered:

(i) so as not to apply to the applicant; or

(ii) so as to apply to the applicant as if different variable factors had been fixed;

and set out the Comptroller's reasons for so recommending.

(2) A report by the Comptroller under subsection (1) must be completed as soon as practicable and in any case not later than 100 days after the day the application is lodged.

(3) After considering the recommendation of the Comptroller and the reasons for the recommendation, the Minister must, by notice in writing published in the *Gazette*:

(a) declare that, for the purposes of this Act and the Anti-Dumping Act, the original dumping duty notice or countervailing duty notice is to remain unchanged; or

(b) declare that, with effect from the date the application is lodged, this Act and the Anti-Dumping Act have effect as if:

(i) the original dumping duty notice or countervailing duty notice had not applied to the applicant; or

(ii) the original dumping duty notice or countervailing duty notice had applied to the applicant but the Minister had fixed specified different variable factors relevant to the determination of duty payable by the applicant;

and, where the Minister does so, the declaration has effect according to its terms.

(4) The Minister must, as soon as practicable after the issue of a notice under subsection (3), notify the applicant of the term of the notice.

Effect of accelerated review

269ZH. If an application for accelerated review of a dumping duty notice or a countervailing duty notice is lodged:

(a) no interim duty can be collected from the applicant in respect of consignments of goods entered for home consumption after the application is lodged and until the completion of the review; but

(b) the Comptroller may, on the importation of goods to which the application relates, require and take securities under section 42 in respect of interim duty that may be payable.

Division 7—Procedural and evidentiary matters

Public notice

269ZI. (1) If a person or body is required or empowered to give public notice of a finding or decision but the provision requiring or empowering the giving of that notice does not specify where the notice is to be given, it is to be published in the *Gazette* and in a newspaper circulating in each State and in the internal Territories.

(2) If a person or body is required or empowered to give public notice of a finding or decision in a particular publication, whether because of subsection (1) or otherwise, that person or body must:

(a) set out in the notice particulars of the finding or decision made; and

(b) set out in the notice, or in a separate report to which the notice refers, the reasons for the finding or decision including all material findings of fact or law on which the finding or decision is based; and

(c) if a person has a right to have the finding or decision reviewed by another body or referred to another body for review—set out in the notice full particulars of those rights; and

(d) if the material findings of fact or law are contained in a separate report—ensure that copies of the report are freely available and that the manner of obtaining a copy is set out in the notice.

(3) A person or body required or empowered to give public notice of a finding or decision must:

(a) ensure that a copy of the notice and, where appropriate, of a report to which the notice refers, is provided to each country whose exporters are affected by the finding or decision; and

(b) give a copy of the report to each other interested party known to be affected by the finding or decision.

(4) If the Comptroller gives public notice of a decision under paragraph 269TD (2) (c) to require securities in respect of interim duty that may become payable, the particulars of the decision to require those securities as set out in the notice should include, in particular:

(a) the names of the exporters of the goods concerned, or, where this is impracticable, the name of the country or countries of export concerned; and

(b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and

(c) in the case of an application for the publication of a notice under section 269TG or 269TH:

(i) particulars of dumping margins established in relation to each of the exporters involved; and

(ii) an explanation of the methods used to compare export prices and normal values to establish those dumping margins;

(d) in the case of an application for the publication of a notice under section 269TJ or 269TK—the amount of subsidy established in relation to each of the exporters involved; and

(e) the considerations relevant to the determination of material injury to an industry, or of material hindrance to the establishment of an industry, for the purposes of the preliminary finding.

(5) If the Minister gives public notice:

(a) of a decision under section 269TG or 269TH to publish a dumping duty notice; or

(b) of a decision under section 269TL not to publish such a notice;

then, for the purposes of the public notice:

(c) the particulars of the decision should include:

(i) the matters referred to in paragraphs (4) (a), (b) and (c); and

(ii) particulars of the export price and normal value of the goods concerned ascertained, or last ascertained, for the purposes of subsection 269TG (1) or (2) or 269TH (1) or (2); and

(iii) any considerations relevant to a determination of material injury to an industry, or of material hindrance to the establishment of an industry, for the purposes of the decision; and

(d) if the decision involves any retrospective imposition of duty—the reasons for the decision should include the basis for the retrospective imposition of duty.

(6) If the Minister gives public notice:

(a) of a decision under section 269TJ or 269TK to publish a countervailing duty notice; or

(b) of a decision under section 269TL not to publish such a notice;

then, for the purposes of the public notice:

(c) the particulars of the decision should include:

(i) the matters referred to in paragraphs (4) (a), (b) and (d); and

(ii) particulars of the countervailable subsidy received in respect of the goods concerned ascertained, or last ascertained, for the purposes of subsection 269TJ (1) or (2) or 269TK (1) or (2); and

(iii) any considerations relevant to a determination of material injury, to an industry or of material hindrance to the establishment of an industry, for the purposes of the decision; and

(d) if the decision involves any retrospective imposition of duty—the reasons for the decision should include the basis for the retrospective imposition of duty.

(7) If the Minister gives public notice under subsection 269TG (6) of a decision to accept an undertaking by an exporter of goods, the particulars of the decision to accept that undertaking should include, in particular:

(a) the name of the exporter of the goods concerned; and

(b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and

(c) the price below which, in accordance with the terms of the undertaking, the goods will not be sold for export to Australia.

(8) If the Minister gives public notice under subsection 269TJ (3C) of a decision to accept an undertaking given by a government of a country of export in relation to the export trade to Australia in like goods, the particulars of the decision to accept that undertaking should include, in particular:

(a) the name of the government of the country of export; and

(b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and

(c) details of the changes proposed to be made to the countervailable subsidy provided by that government in respect of those goods.

(9) If, a person or body is required or empowered to give public notice of a finding or decision in a particular publication:

(a) the person or body must ensure that the notice given does not contain any information that is claimed to be confidential or to be information whose publication would adversely affect a person's business or commercial interests; but

(b) if it is practicable to do so, the person or body should include in the notice a summary of that information in a form that allows a reasonable understanding of the information without breaching that confidentiality or adversely affecting those interests.

Comptroller to maintain public record for certain purposes

269ZJ. (1) The Comptroller must, in relation to each application received under subsection 269TB (1) or (2) or 269Z (1) or request made under subsection 269Z (2):

(a) maintain a public record of the investigation or review conducted for the purposes of the application or request, containing, subject to subsection (2), a copy of all submissions from interested parties and all relevant correspondence between the Comptroller and other persons; and

(b) draw the attention of all interested parties to the existence of the public record, and to their entitlement to inspect that record; and

(c) at the request of an interested party, make the record available to that party for inspection.

(2) To the extent that information given to the Comptroller by a person is claimed to be confidential or to be information whose publication would adversely affect a person's business or commercial interests, the person giving that information must ensure that a summary of that information:

(a) that contains sufficient detail to allow a reasonable understanding of the substance of the information; but

(b) that does not breach that confidentiality or adversely affect those interests;

is given to the Comptroller for inclusion in the public record.

(3) A person is not required to give the Comptroller a summary of information under subsection (2) for inclusion in the public record if the person satisfies the Comptroller that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

(4) If oral information is given to the Comptroller by a person, the Comptroller must not take that information into account unless it is subsequently put in writing by the person or by the Comptroller and thereby becomes available, subject to considerations of confidentiality and to the need to protect business and commercial interests, as a part of the public record.

(5) If:

(a) in relation to an application under subsection 269TB (1) or (2) or 269Z (1) or a request under subsection 269Z (2), a person claims that information is confidential or would adversely affect a person's business or commercial interests; and

(b) the Comptroller indicates to the party that he or she disagrees with the claim;

but, despite the opinion of the Comptroller, the person making the claim will not:

(c) agree to the inclusion of the information in the public record; or

(d) prepare a summary of the information for inclusion in that record;

the Comptroller may disregard the information unless it is demonstrated that the information is correct.

(6) If:

(a) in relation to an application under subsection 269TB (1) or (2) or 269Z (1) or a request under subsection 269Z (2), a person claims that information is confidential or would adversely affect a person's business or commercial interests; and

(b) the Comptroller indicates to the party that he or she agrees with the claim;

but the person making the claim will not prepare a summary of the information for inclusion in that record, the Comptroller may disregard the information unless it is demonstrated that the information is correct.

PART XVI—REGULATIONS AND BY-LAWS

Regulations

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;

(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 $1,000 in respect of any contravention of any of the regulations.

(3) The power to make regulations for the purposes of the definition of "airport shop goods" in subsection 4 (1) extends to making regulations that:

(a) declare local use goods to be airport shop goods for the purposes of section 96B; or

(b) declare a class of local use goods, or a class of goods that includes local use goods, to be a class of airport shop goods for the purposes of that section.

(3A) Where, in any regulations made for the purposes of this Act, reference is made to the document known as the Australian Harmonized Export Commodity Classification published by the Australian Bureau of Statistics, that reference shall, unless the contrary intention appears in those regulations, be read as a reference to that document as so published and as in force from time to time.

(4) The power to make regulations for the purposes of paragraph 96B (3) (b) or (c) extends to making regulations that prescribe quantities in relation to airport shop goods that are local use goods.

(5) In subsections (3) and (4), **"local use goods"** means goods:

(a) that have not been, and are not proposed to be, imported into Australia; and

(b) that have not been, and are not proposed to be, exported from Australia.

CEO may make by-laws

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 CEO may, subject to the succeeding sections of this Part, make by-laws for the purposes of that item or proposed item.

By-laws specifying goods

272. The CEO 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;

(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.

Determinations

273. **(1)** The CEO 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-laws shall apply, or shall be deemed to have applied, to the particular goods specified in the determination.

(2) The CEO may make a determination under the last preceding subsection 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 CEO 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 determinations for purposes of repealed items

273A. The CEO 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 determinations

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

(c) shall not be deemed to be a Statutory Rule within the meaning of the *Rules Publication Act 1903-1939*.

(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.

Retrospective by-laws and determinations not to increase duty

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.

By-laws and determinations for purposes of proposals

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;

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.

Notification of proposals when House of Representatives is not sitting

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:

(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.

(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 Customs Tariff alteration, as the case may be, proposed in the Parliament.

Interpretation

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.

(2) Unless the contrary intention appears, a reference in this Part to an item of a Customs Tariff includes a reference to a heading and a subheading in Schedule 3 to the *Customs Tariff Act 1995*.

PART XVII—MISCELLANEOUS

Briefing of Leader of Opposition on certain matters

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.

Notices

273GAA. (1) Where a person makes a decision to which subsection (2) applies in relation to a warehouse licence or an agents licence, the person shall cause to be served, either personally or by post, on the applicant or the holder of the licence, as the case requires, a notice in writing setting out the decision.

(2) For the purposes of subsection (1), the following decisions are decisions to which this subsection applies:

(a) a decision under Part V refusing to grant a warehouse licence;

(b) a decision under subsection 82 (5) refusing to vary the conditions specified in a warehouse licence;

(c) a decision under subsection 84 (3) refusing to renew a warehouse licence;

(d) a decision under Division 3 of Part XI refusing to grant an agents licence;

(e) a decision under subsection 183CF (1) or (2) refusing to vary the endorsements on an agents licence;

(f) a decision under subsection 183CG (7) refusing to vary the conditions specified in an agents licence.

(3) Where a Collector makes:

(a) a decision under section 95 refusing to cancel a valuation of warehoused goods and to revalue the goods; or

(b) a decision under subsection 97 (1) refusing to grant permission to the owner of warehoused goods;

the Collector shall cause to be served, either personally or by post, on the owner of the goods, a notice in writing setting out the decision.

(4) Where the CEO makes a decision under subsection 119 (2) not to grant a Certificate of Clearance, he shall cause to be served, either personally or by post, on the applicant for the Certificate, a notice in writing setting out the decision.

(5) Where a Collector makes a decision under section 126 refusing to allow the export of goods by a person, he shall cause to be served, either personally or by post, a notice in writing setting out the decision on the person.

(6) Where a Collector makes a decision under section 164 refusing to pay a rebate, he shall cause to be served, either personally or by post, on the applicant for the rebate, a notice in writing setting out the decision.

(7) A notice in accordance with section 86 to the holder of a warehouse licence shall state the ground or grounds on which the notice is given.

(8) A notice under subsection 87 (2) of the cancellation by the CEO of a warehouse licence shall set out the CEO's findings on material questions of fact, refer to the evidence or other material on which those findings were based and give the reasons for the cancellation.

(9) A notice under subsection 183CS (1) shall set out the ground or grounds of the decision of the CEO to which the notice relates.

(10) A reference in this section to a notice in writing setting out the decision of a person is a reference to a notice in writing setting out the decision and the person's findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

Review of decisions

273GA. (1) Subject to this section, applications may be made to the Administrative Appeals Tribunal for review of:

(aa) a determination by the CEO for the purposes of subsection 28 (2);

(ab) a determination by the CEO for the purposes of subsection 28 (3);

(a) a decision of a Collector under section 35A making a demand;

(aaa) a decision by the CEO for the purposes of paragraph 58A (6) (c) refusing to authorise a journey;

(aaaa) a decision by the CEO under section 67C to refuse to register a person as a registered user in relation to a cargo automation system;

(aaab) a decision by the CEO under section 67C to cancel the registration of a person as a registered user in relation to a cargo automation system;

(aab) a decision by an officer under section 69 to refuse to grant a permission under that section;

(aac) a decision by an officer under section 69 to revoke a permission granted under that section;

(aad) a decision by an officer under section 70 to refuse to grant a permission under that section;

(aae) a decision by an officer under section 70 to revoke a permission granted under that section;

(aaf) a decision by an officer under section 71 to refuse to authorise the delivery of goods into home consumption;

(aag) a decision by an officer under section 71B to cancel an authority to deal with goods;

(aah) a decision by an officer under section 71E to refuse an application of a permission to move goods;

(aai) a decision by the CEO under section 77A to refuse to register a person as a registered COMPILE user;

(aaj) a decision by the CEO under section 77A to cancel the allocation to a registered COMPILE user of a PIN number or PIN numbers;

(aak) a decision by an officer under subsection 77D(4) to specify conditions to which a permission under section 77D is subject;

(aal) a decision by an officer under section 77D to refuse to grant a permission under that section;

(aam) a decision by an officer under section 77D to revoke a permission granted under that section;

(aan) a decision by an officer under subsection 77E(4) to specify conditions to which a permission under section 77E is subject;

(aao) a decision by an officer under section 77E to refuse to grant a permission under that section;

(aap) a decision by an officer under section 77E to revoke a permission granted under that section;

(b) a decision of the CEO or a Collector for the purposes of Part V;

(ba) a decision by the CEO under section 114B to refuse to grant a person confirming exporter status;

(bb) a decision by the CEO under section 114B to cancel or modify a person's status as a confirming exporter;

(bc) a decision by an officer under section 114C to cancel an authority to deal with goods;

(c) a decision by the CEO under section 119 not to grant a Certificate of Clearance;

(ca) a decision by the CEO under section 122A to refuse to register a person as a registered EXIT user;

(cb) a decision by the CEO under section 122A to cancel a person's registration as a registered EXIT user;

(d) a decision by a Collector under section 126 refusing to allow the export of goods;

(e) a decision of the CEO under section 132B making a quota order;

(f) a decision of the CEO under section 132C varying a quota order;

(h) a decision of the CEO under subsection 161J (2) specifying a rate of exchange;

(haaa) a decision of a Collector under section 163 in relation to an application for a refund, rebate or remission of duty;

(ha) a decision of a Collector under section 164 refusing to pay a rebate;

(haa) a decision of a Collector under subsection 164 (2) demanding the repayment of rebate;

(hb) a decision of a Collector for the purposes of subsection 164 (4C);

(j) a decision of the CEO under section 164B;

(ja) a decision of the CEO under subsection 165 (3) demanding repayment of the whole or a part of a rebate of duty;

(jb) a decision of a Collector under section 168 in relation to an application for a drawback of duty;

(k) a decision of the Minister, the CEO, or a Collector for the purposes of Part XI;

(ka) a decision of the CEO under subsection 243U (1):

(i) not to remit a penalty payable under section 243T in respect of duty payable on goods; or

(ii) to remit part only of such a penalty;

(m) a decision under subsection 269H (1) to reject an application for a TCO;

(maa) a decision under subsection 269L (4) to the effect that the CEO is not satisfied that a proposed amendment of a description of goods to be covered by a TCO does not contravene subsection 269L (3):

(ma) a decision of the CEO under section 269HA rejecting a TCO application;

(n) a decision of the CEO under section 269SH on a reconsideration of a decision of the CEO under subsection 269P (1);

(o) a decision of the CEO under section 269SH on a reconsideration of a decision of the CEO under subsection 269Q (1);

(p) a decision of the CEO under subsection 269SA (1) or (2);

(q) a decision of the CEO under section 269SH on a reconsideration of a decision of the CEO under subsection 269SC (1);

(r) a decision of the CEO under section 269SH on a reconsideration of a decision of the CEO under subsection 269SC (4);

(s) a decision by the CEO under subsection 269SD (1AB), (1), (1A), (2) or (5).

(2) Where a dispute referred to in subsection 167 (1) has arisen and the owner of the goods has, in accordance with that subsection, paid under protest the sum demanded by the Collector, an application may be made to the Tribunal for review of the decision to make that demand and of any other decision forming part of the process of making, or leading up to the making of, that first-mentioned decision.

(3) Subsection 119 (3) does not apply where a Certificate of Clearance is granted to the ship or aircraft referred to in that subsection as a result of a review by the Tribunal.

(5) An application may not be made to the Tribunal under subsection (2) unless the application is made within the time specified in paragraph 167 (4) (a) or (b), whichever is appropriate.

(6) Where the owner of goods has made an application to the Tribunal under subsection (2), he is not entitled to bring an action under subsection 167 (2).

(6A) An application may not be made to the Tribunal in respect of a decision under section 269SH on a reconsideration of a decision of the CEO under subsection 269P (1), 269Q (1) or 269SC (1) or (4) unless the person who makes the application to the Tribunal is:

(a) an affected person within the meaning of section 269SH; and

(b) is adversely affected by the decision on the reconsideration.

(7) Where, on an application made under subsection (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*.

Review of decisions under Customs Tariff Act

273H. **(1)** Applications may be made to the Administrative Appeals Tribunal for review of a decision of the CEO under section 9 of the *Customs Tariff Act 1995*.

(2) In subsection (1), **"decision"** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Review of decisions under the *Customs Tariff (Miscellaneous Amendments) Act 1996*

273HA. (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the CEO to remake a Commercial Tariff Concession Order or Tariff Concession Order under paragraph (5)(d) of item 3 of Schedule 2 to the *Customs Tariff (Miscellaneous Amendments) Act 1996*.

(2) In subsection (1), ***decision*** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Review of decisions under Customs Tariff (Coal Export Duty) Act

273J. (1) 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 7 of that Act and for review of decisions of the Minister for Resources and Energy made for the purposes of section 8 of that Act.

(2) In subsection (1), **"decision"** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

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

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

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

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

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

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

Statement to accompany notification of decisions

273K. (1) Where notice in writing of the making of a decision of a kind referred to in subsection 273GA (1) or (2) or section 273H or subsection 273J (1) or 273JA (1) is given to a person whose interests are affected by the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act*

1975, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of the person or persons whose interests are affected by the decision.

(2) Any failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

Entry and transmission of information by computer

273L. If this Act requires or permits information (including information in the form of particular words) to be entered or transmitted by computer, the information may be entered or transmitted by computer in an encoded form chosen by Customs.

Commissioned ships and aircraft to be reported

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 a place outside Australia or in Australia shall when called upon by the CEO or an authorised officer 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.

Commissioned ships and aircraft may be searched

275. Ships or aircraft under commission from His Majesty or any foreign State having on board any goods other than ship's or aircraft's stores laden in a place outside Australia or in Australia may be boarded and searched by the CEO or an authorised officer in the same manner as other ships or aircraft, and the CEO or the authorised 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

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: $10,000.

(3) Where a direction not to move a ship or aircraft from a boarding station has been given under subsection (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

(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 CEO or the Regional Director for a State or Territory) gives a direction under subsection (1) not to move a ship or aircraft from a boarding station, the Collector shall forthwith notify:

(a) where the boarding station is in the Australian Capital Territory—the CEO;

(b) where the boarding station is in a State—the Regional Director for the State; or

(c) where the boarding station is in the Northern Territory—the Regional Director 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 subsection (1); and

(b) the CEO or the Regional Director 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;

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 subsection 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.

Collector's sales

276. As to sales by the Collector:

(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 subject to duty and charges or at a price that includes 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.

Proceeds of sales

277. (1) 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, where the price for the goods includes duty, 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.

(2) For the purposes of section 132, goods to which subsection (1) of this section applies on which duty has not been paid shall be taken to have been entered for home consumption on the day on which the goods are sold by the Collector.

Jurisdiction of courts

277A. (1) A provision of the *Judiciary Act 1903* by which a court of a State is invested with federal jurisdiction has effect, in relation to matters arising under this Act, as if that jurisdiction were so invested without limitation as to locality other than the limitation imposed by section 80 of the Constitution.

(2) Subject to the Constitution, jurisdiction is conferred on the several courts of the Territories, within the limits of their several jurisdictions, other than limits as to locality, with respect to matters arising under this Act.

(3) The trial of an offence against a provision of this Act not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

Examination of goods

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 VI

Section 4

Column 1 Substance	Column 2 Trafficable quantity (grams)	Column 3 Commercial quantity (kilograms)
ACETORPHINE	2.000	
ACETYL-ALPHA-METHYLFENTANYL	0.005	0.005
ACETYLCODEINE	2.0	
ACETYLDIHYDROCODEINE	2.0	
ACETYLMETHADOL	2.0	
ALLYLPRODINE	2.0	
ALPHACETYLMETHADOL	10.0	
ALPHAMEPRODINE	0.2	
ALPHAMETHADOL	0.2	
ALPHA-METHYLFENTANYL	0.005	0.005
ALPHA-METHYLTHIOFENTANYL	0.005	0.005
ALPHAPRODINE	25.0	
AMPHECOLORAL	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	
BETA-HYDROXYFENTANYL	0.005	0.005
BETA-HYDROXY-3-METHYLFENTANYL	0.005	0.005
BETAMEPRODINE	5.0	
BETAMETHADOL	5.0	
BETAPRODINE	5.0	
BEZITRAMIDE	5.0	
4-BROMO-2, 5-DIMETHOXYAMPHETAMINE	0.5	
BUFOTENINE	2.0	
CANNABINOIDS	2.0	
CANNABIS	100.0	100.0
CANNABIS RESIN	20.0	50.0
CHLORPHENTERMINE	2.0	
CLONITAZENE	5.0	
COCAINE	2.0	2.0
CODEINE	10.0	
CODEINE-N-OXIDE	10.0	
CODOXIME	10.0	
DESOMORPHINE	2.0	

SCHEDULE VI—continued

Column 1 Substance	Column 2 Trafficable quantity (grams)	Column 3 Commercial quantity (kilograms)
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	10.0	
ETHYLMORPHINE	2.0	
ETONITAZENE	5.0	
ETORPHINE	5.0	
ETOXERIDINE	5.0	
FENTANYL	0.005	
FURETHIDINE	1.0	
HARMALINE	2.0	
HARMINE	2.0	
HEROIN	2.0	1.5
HYDROCODONE	2.0	
HYDROMORPHINOL	2.0	
HYDROMORPHONE	2.0	
HYDROXYAMPHETAMINE	2.0	
HYDROXYPETHIDINE	5.0	
KETOBEMIDONE	2.0	
LEVORPHANOL	1.0	
LYSERGAMIDE	0.1	
LYSERGIC ACID	0.002	0.002
LYSERGIDE	0.002	0.002
MESCALINE	7.5	
METAZOCINE	7.0	
METHADONE	2.0	

SCHEDULE VI—continued

Column 1 Substance	Column 2 Trafficable quantity (grams)	Column 3 Commercial quantity (kilograms)
METHAQUALONE	50.0	
METHORPHAN	2.0	
METHYLAMPHETAMINE	2.0	
3, 4-METHYLENEDIOXYAMPHETAMINE	0.5	
3, 4-METHYLENEDIOXYMETHAMPHETAMINE	0.50	0.50
METHYLDESORPHINE	2.0	
METHYLDIHYDROMORPHINE	2.0	
3-METHYLFENTANYL	0.005	0.005
METHYLPHENIDATE	2.0	
1-METHYL-4-PHENYL-4-PROPIONOXYPIPERIDINE (MPPP)	2.0	2.0
3-METHYLTHIOFENTANYL	0.005	0.005
METOPON	2.0	
MONOACETYLMORPHINES	2.0	
MORAMIDE	2.0	
MORPHERIDINE	2.0	
MORPHINE	2.0	1.5
MORPHINE-N-OXIDE	2.0	
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	20.0
OXYCODONE	5.0	
OXYMORPHONE	2.0	
PARA-FLUOROFENTANYL	0.005	0.005
PENTAZOCINE	20.0	
PETHIDINE	10.0	
PHENADOXONE	10.0	
PHENAMPROMIDE	10.0	
PHENAZOCINE	1.0	
PHENDIMETRAZINE	5.0	

SCHEDULE VI—continued

Column 1 Substance	Column 2 Trafficable quantity (grams)	Column 3 Commercial quantity (kilograms)
PHENMETRAZINE	5.0	
PHENOMORPHAN	5.0	
PHENOPERIDINE	1.0	
1-PHENYLETHYL-4-PHENYL-4-ACETOXYPIPERIDINE (PEPAP)	2.0	2.0
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	5.0
THEBACON	2.0	
THEBAINE	2.0	
THIOFENTANYL	0.005	0.005
TRIMEPERIDINE	10.0	
A substance ("drug analogue") which is, in relation to another substance (being a substance specified elsewhere in this Schedule, or a stereoisomer, a structural isomer (with the same constituent groups) or an alkaloid of such a substance):— (a) a stereoisomer; or (b) a structural isomer having the same constituent groups; or (c) an alkaloid; or (d) a structural modification obtained in 1 or more of the following ways: (i) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures; (ii) by the addition of hydrogen atoms to 1 or more unsaturated bonds;		

SCHEDULE VI—continued

Column 1 Substance	Column 2 Trafficable quantity (grams)	Column 3 Commercial quantity (kilograms)
(iii) by the addition of 1 or more of the following groups, namely alkoxy, cyclic diether, acyl, acyloxy, mono-amino and dialkylamino groups with up to 6 carbon atoms in any alkyl residue; alkyl, alkenyl and alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon; and halogen, hydroxy, nitro and amino groups;		
(iv) by the replacement of 1 or more of the groups specified in subparagraph (iii) with another such group or groups;		
(v) by the conversion of a carboxyl or an ester group into an amide group; or		
(e) otherwise an homologue, analogue, chemical derivative or substance substantially similar in chemical structure;		
however obtained, except where the drug analogue is separately specified in this Schedule	The minimum trafficable quantity of: (a) that other substance in relation to which the substance is a drug analogue; or (b) if there is more than 1 such other substance—that other substance having the least minimum trafficable quantity	The minimum commercial quantity, if any, of: (a) that other substance in relation to which the substance is a drug analogue; or (b) if there is more than 1 such other substance—that other substance having the least minimum commercial quantity.

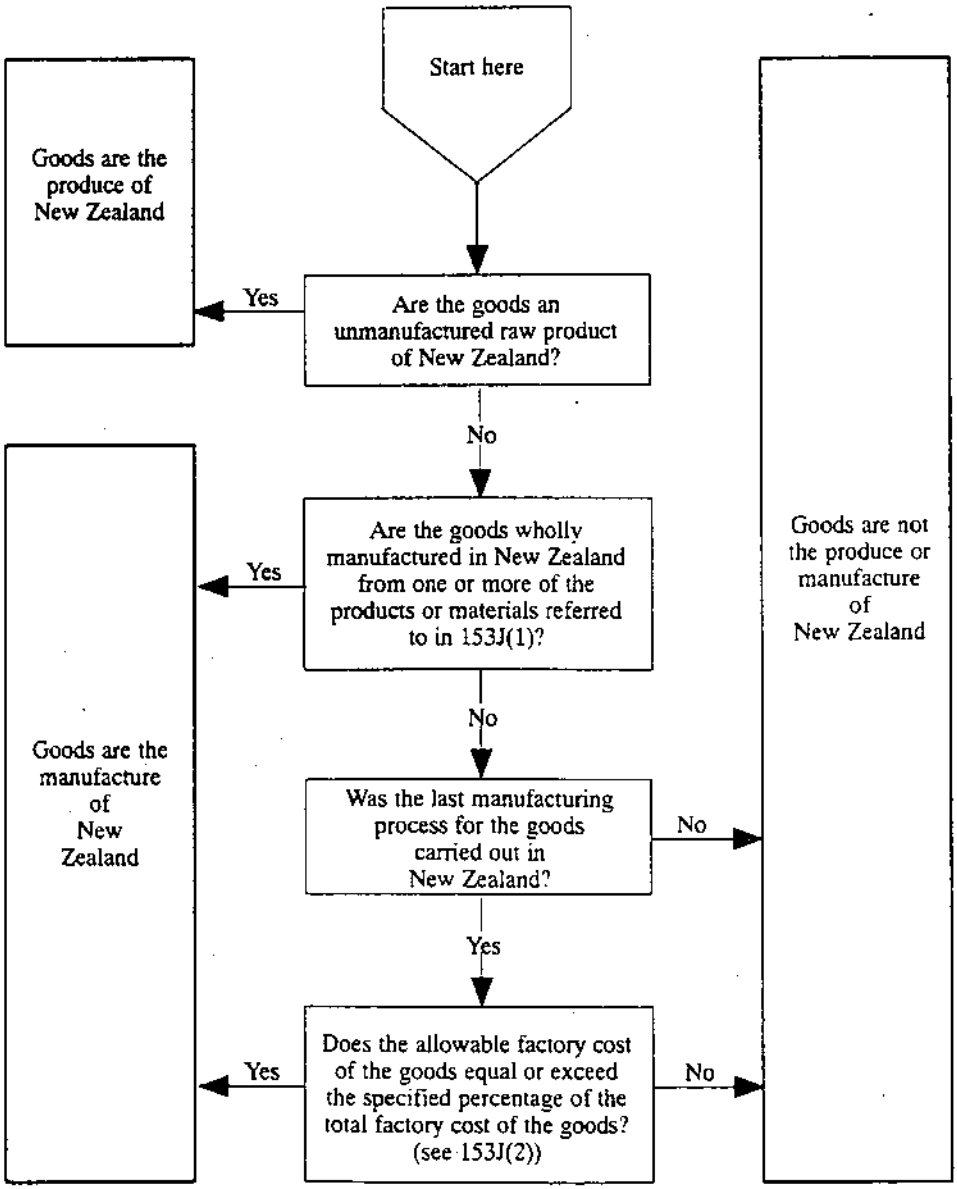
SCHEDULE VII

Section 153A

DIAGRAMS AND EXPLANATORY NOTES ILLUSTRATING OPERATION OF DIVISION 1A OF PART VIII

DIAGRAM 1

Decision diagram for working out whether preference claim goods are the produce or manufacture of New Zealand

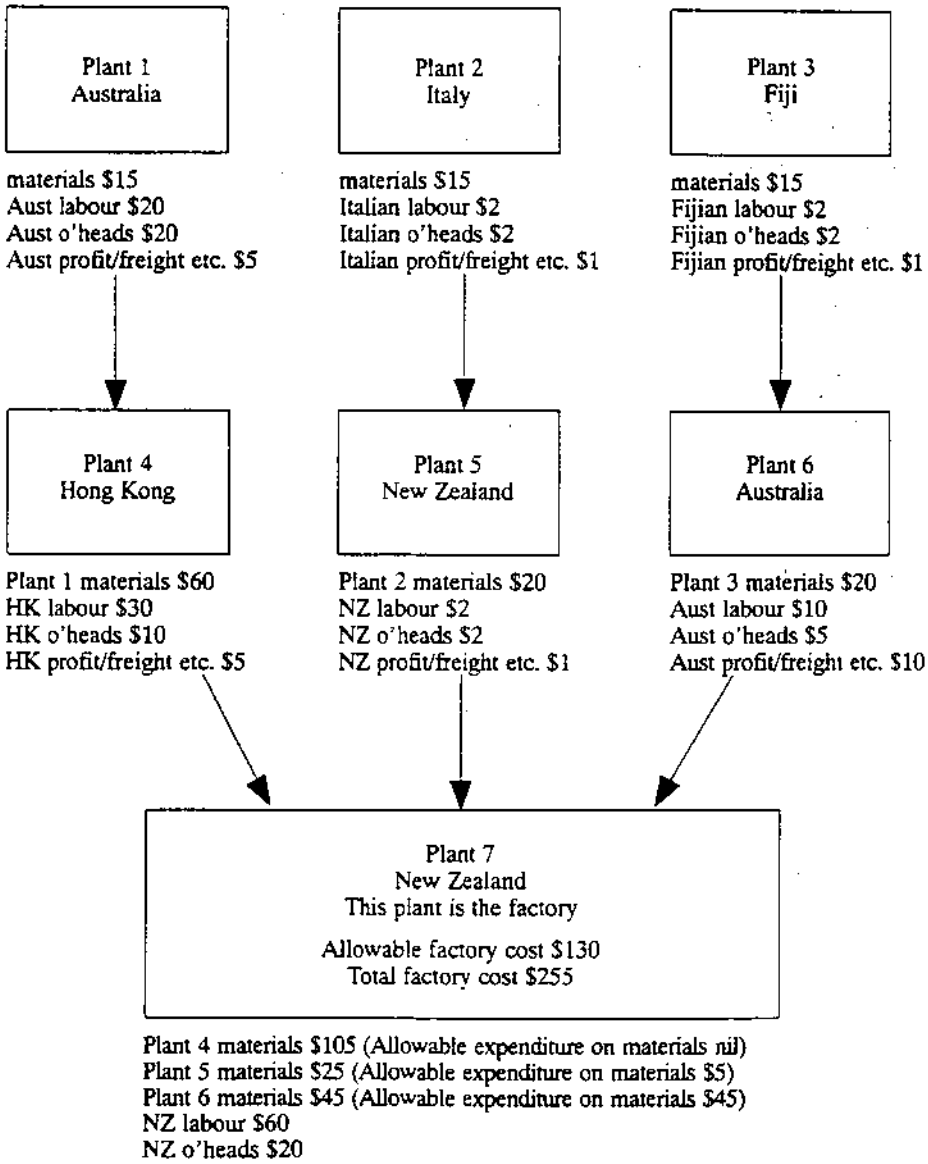


SCHEDULE VII—continued

DIAGRAM 2

An example of possible inputs into goods last processed in New Zealand and claimed to be the manufacture of that country

[An explanation of the calculations to determine whether the goods are properly so claimed appears in the notes to the diagram.]



SCHEDULE VII—continued

Notes relating to diagram 2

Goods imported into Australia after last process in the factory (ie Plant 7) are claimed to be the manufacture of New Zealand. This claim will be correct if the allowable factory cost of these preference claim goods is at least 50% of their total factory cost.

To work out both of these factory costs, we must first work out the allowable expenditure of the factory on the 3 manufactured materials that make up the preference claim goods. We will also need to take into account 3 other amounts, namely the total expenditure of the factory on materials, and the allowable expenditure of the factory on labour, and on overheads.

Working out allowable expenditure on materials (see section 153D)

- The allowable expenditure of the factory on particular manufactured materials in the form they are received from Plant 4 is nil because the materials are imported from outside the qualifying area (ie Hong Kong). (See subsection 153D (2)). This is so even though the manufactured materials themselves incorporate goods originating inside the qualifying area (ie Plant 1 in Australia).
- The allowable expenditure of the factory on particular manufactured materials in the form they are received from Plant 5 is not $25 but $5. This is because:
  - the cost of contributing materials imported into the qualifying area from outside that area (ie Plant 2 in Italy) and subsequently processed is excluded under subsection 153D (4) from the working out of that allowable expenditure; and
  - subsection 153D (6) does not apply.
- The allowable expenditure of the factory on particular manufactured materials in the form they are received from Plant 6 is the full cost to the manufacturer of $45. It is true that contributing materials are imported into the qualifying area from outside that area (ie Plant 3 in Fiji) and subsequently processed. However, the cost of those contributing materials is not required to be excluded under subsection 153D (4) from the working out of that allowable expenditure because subsection 153D (6) applies.

Working out allowable factory cost (see section 153B)

Allowable expenditure of the factory on materials from Plants 4, 5 and 6 (Nil + $5 + $45)		$50
PLUS allowable expenditure of the factory on labour		$60
PLUS allowable expenditure of the factory on overheads		$20
	TOTAL	$130

Working out total factory cost (see section 153B)

Total expenditure of the factory on materials from Plants 4, 5 and 6 ($105 + $25 + $45)		$175
PLUS allowable expenditure of the factory on labour		$60
PLUS allowable expenditure of the factory on overheads		$20
	TOTAL	$255

CONCLUSION: Since allowable factory cost is at least 50% of total factory cost, goods are the manufacture of New Zealand. (See subsection 153J (2)).

NOTES

1. The *Customs Act 1901* as shown in this reprint comprises Act No. 6, 1901 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Act 1901	6, 1901	3 Oct 1901	4 Oct 1901 (*see Gazette* 1901, p. 165)	
Spirits Act 1906	21, 1906	12 Oct 1906	1 Jan 1907 (*see Gazette* 1907)	—
Customs (Inter-State Accounts) Act 1910 (a)	9, 1910	7 Sept 1910	7 Sept 1910	—
Customs Act 1910	36, 1910	1 Dec 1910	1 Dec 1910	—
Customs Act 1914	19, 1914	7 Dec 1914	7 Dec 1914	—
Customs Act 1916	10, 1916	30 May 1916	30 May 1916	—
Customs Act 1920	41, 1920	10 Nov 1920	(*b*)	—
Customs Act 1922	19, 1922	9 Oct 1922	9 Oct 1922	—
Customs Act 1923	12, 1923	17 Aug 1923	17 Aug 1923	—
Customs Act 1925	22, 1925	26 Sept 1925	26 Sept 1925	—
Customs Act 1930	6, 1930	29 Mar 1930	29 Mar 1930	S. 3
Customs Act 1934	7, 1934	24 July 1934	S. 17: 1 Jan 1935 Remainder: Royal Assent	—
Statute Law Revision Act 1934	45, 1934	6 Aug 1934	6 Aug 1934	—
Customs Act 1935	7, 1935	5 Apr 1935	1 Jan 1935	—
Customs Act 1936	85, 1936	7 Dec 1936	7 Dec 1936	—
Customs Act 1947	54, 1947	13 Nov 1947	15 Nov 1947 (*see Gazette* 1947, p. 337)	—
Customs Act 1949	45, 1949	27 Oct 1949	1 Apr 1950 (*see Gazette* 1950, p. 723)	S. 3 (2)
Customs Act 1950	56, 1950	14 Dec 1950	30 Nov 1950	—
Statute Law Revision Act 1950	80, 1950	16 Dec 1950	31 Dec 1950	Ss. 16 and 17
Customs Act 1951	56, 1951	11 Dec 1951	11 Dec 1951	S. 7
Customs Act 1952	108, 1952	19 Nov 1952	Ss. 7 and 11: 14 Dec 1956 (*see Gazette* 1956, p. 3889) Remainder: Royal Assent	Ss. 19 (2) and 20 (2)
Customs Act 1953	47, 1953	26 Oct 1953	23 Nov 1953	—
Customs Act 1954	66, 1954	8 Nov 1954	6 Dec 1954	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Act 1957	37, 1957	7 June 1957	S. 4: 7 Sept 1957 Remainder: Royal Assent	Ss. 9 (2) and 11 (2)
Customs Act 1959	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 Gazette* 1960, p. 3065) Remainder: Royal Assent	Ss. 5 (2) and 28-30
Customs Act 1960	42, 1960	5 Sept 1960	5 Sept 1960	—
Customs Act (No. 2) 1960	111, 1960	19 Dec 1960	S. 3: 30 Nov 1961 (*see Gazette* 1961, p. 4309) Remainder: Royal Assent	S. 2 (3)
Customs Act 1963	48, 1963	16 Oct 1963	Ss. 5, 20, 22, 31 and 32: 1 July 1964 (*see Gazette* 1964, p. 2348) Ss. 14 (1), 15 and 16: 1 Sept 1965 (*see Gazette* 1965, p. 3767) Remainder: Royal Assent	Ss. 8 (2), 12 (2), 14 (2), 20 (2), 22 (2), 25 (2) and 29 (2)
Customs Act 1965	29, 1965	2 June 1965	1 July 1965	—
Customs Act (No. 2) 1965	82, 1965	30 Nov 1965	12 Apr 1966 (*see Gazette* 1966, p. 1963)	—
as amended by *Customs Act (No. 3) 1965*	133, 1965	18 Dec 1965	14 Feb 1966	—
Customs Act (No. 3) 1965	133, 1965	18 Dec 1965	14 Feb 1966	—
Customs Act 1966	28, 1966	24 May 1966	S. 3: 16 June 1966 (*see Gazette* 1966, p. 3185) Remainder: Royal Assent	—
Customs Act 1967	54, 1967	30 May 1967	30 May 1967	S. 11
Customs Act 1968	14, 1968	16 May 1968	13 June 1968	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Act (No. 2) 1968	104, 1968	2 Dec 1968	Ss. 1, 2, 31 and 37: Royal Assent Ss. 29 and 30: 18 June 1968 Remainder: 1 Oct 1969 (*see Gazette* 1969, p. 5771)	S. 37
Customs Act 1971	12, 1971	5 Apr 1971	Ss. 1-3 and 5: Royal Assent S. 4: 1 July 1974 (*see Gazette* 1974, No. 53D)	S. 5
Customs Act (No. 2) 1971	134, 1971	16 Dec 1971	13 Jan 1972	—
Customs Act 1973	162, 1973	7 Dec 1973	7 Dec 1973	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9 (1) and 10
Customs Act 1974	28, 1974	1 Aug 1974	1 Aug 1974	—
Customs Act (No. 2) 1974	120, 1974	3 Dec 1974	3 Dec 1974	Ss. 3 (2), 4 (2), (3), 5 (2) and 6 (2)
Postal and Telecommunications Commissions (Transitional Provisions) Act 1975	56, 1975	12 June 1975	Ss. 4 and 38: 1 July 1975 (*see* s. 2 (1) and *Gazette* 1975, No. S122) Remainder: Royal Assent	—
as amended by *Customs Act (No. 2) 1975*	107, 1975	9 Oct 1975	(c)	S. 2
Customs Act 1975	77, 1975	20 June 1975	20 June 1975 (*see* s. 2)	—
Customs Act (No. 2) 1975	107, 1975	9 Oct 1975	(c)	S. 2
Customs Amendment Act 1976	41, 1976	2 June 1976	1 July 1976	S. 7
Administrative Changes (Consequential Provisions) Act 1976	91, 1976	20 Sept 1976	S. 3: (*d*)	S. 4
Customs Amendment Act (No. 2) 1976	174, 1976	13 Dec 1976	S. 4: 1 Feb 1977 (*see Gazette* 1977, No. S8) Remainder: Royal Assent	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Amendment Act 1977	154, 1977	10 Nov 1977	Ss. 3, 4 and 9: 20 Oct 1978 (*see Gazette* 1978, No. S195) S. 7: 24 Oct 1978 (*see Gazette* 1978, No. S219) Remainder: Royal Assent	Ss. 5 (2), 7 (2), (3) and 13
Administrative Changes (Consequential Provisions) Act 1978	36, 1978	12 June 1978	12 June 1978	S. 8
Customs Amendment Act 1978	183, 1978	4 Dec 1978	S. 3: 10 July 1978 Remainder: Royal Assent	Ss. 4 and 5
Jurisdiction of Courts (Miscellaneous Amendments) Act 1979	19, 1979	28 Mar 1979	Parts II-XVII (ss. 3-123): 15 May 1979 (*see Gazette* 1979, No. S86) Remainder: Royal Assent	S. 124
Customs Amendment Act 1979	92, 1979	14 Sept 1979	Ss. 5 and 6: (*e*) Remainder: Royal Assent	Ss. 4 (2), (3) and 17
as amended by				
Customs and Excise Legislation Amendment Act 1985	40, 1985	30 May 1985	Part III (ss. 27, 28): 13 Sept 1979 (*f*)	—
Customs and Excise Legislation Amendment Act (No. 2) 1985	175, 1985	16 Dec 1985	Part III (ss. 14, 15): (*g*)	—
Customs (Detention and Search) Act 1990	79, 1990	23 Oct 1990	23 Apr 1991	—
Customs Amendment Act (No. 2) 1979	116, 1979	25 Oct 1979	1 June 1980 (*see* s. 2 and *Gazette* 1980, No. G21, p. 2)	—
Australian Federal Police (Consequential Amendments) Act 1979	155, 1979	28 Nov 1979	19 Oct 1979 (*see* s. 2 and *Gazette* 1979, No. S206)	—
Customs Amendment Act (No. 3) 1979	177, 1979	4 Dec 1979	1 Nov 1979	—
Customs Amendment Act (No. 4) 1979	180, 1979	4 Dec 1979	4 Dec 1979	S. 14

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Amendment Act (No. 2) 1980	13, 1980	8 Apr 1980	1 Feb 1981 (*see* s. 2 and *Gazette* 1980, No. S282)	Ss. 4 (2), 5 (2), (3) and 7
Customs Amendment Act 1980	15, 1980	15 Apr 1980	16 Apr 1980 (*see* s. 2)	—
Customs Amendment Act (No. 3) 1980	110, 1980	6 June 1980	Ss. 3 (b), 4 and 5: 1 July 1980 (*see Gazette* 1980, No. S146) Remainder: Royal Assent	Ss. 4 (2)-(4), 10 (2), 23 (2) and 32
Customs Amendment Act (No. 4) 1980	171, 1980	17 Dec 1980	1 Jan 1981	—
Customs Amendment (Tenders) Act 1981	45, 1981	14 May 1981	14 May 1981	—
Statute Law Revision Act 1981	61, 1981	12 June 1981	S. 115: Royal Assent (*h*)	—
Customs Amendment Act 1981	64, 1981	12 June 1981	Ss. 6-12, 15-18, 19 (2), 20-24 and 27: 21 Dec 1983 (*see Gazette* 1983, No. S332) Ss. 13 and 14: (*i*) Remainder: 10 July 1981	Ss. 28 (2), (3) and 38
as amended by				
Off-shore Installations (Miscellaneous Amendments) Act 1982	51, 1982	16 June 1982	(*see* 51, 1982 below)	—
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	(*see* 5, 1990 below)	—
Customs Amendment (Securities) Act 1981	67, 1981	12 June 1981	10 July 1981	S. 3 (2)
Customs (Unlawful Exportation of Food) Amendment Act 1981	152, 1981	26 Oct 1981	26 Oct 1981	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs (Valuations) Amendment Act 1981	157, 1981	27 Oct 1981	S. 4: 14 May 1981 Ss. 5, 8 and 11-13: 30 Nov 1981 (*see Gazette* 1981, No. S246) S. 9: 10 July 1981 Remainder: Royal Assent	Ss. 10 (2) and 13
Export Control (Miscellaneous Amendments) Act 1982	48, 1982	9 June 1982	1 Jan 1983 (*see* s. 2 and *Gazette* 1982, No. G48, p. 2)	—
Off-shore Installations (Miscellaneous Amendments) Act 1982	51, 1982	16 June 1982	Ss. 12, 13, 22 and Part III (ss. 26-28): 21 Dec 1983 (*see* s. 2 (2) and *Gazette* 1983, No. S332) Remainder: 14 July 1982	S. 25
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982	80, 1982	22 Sept 1982	Part LXXVII (s. 280): Royal Assent (*j*)	S. 280 (2) and (3)
Customs and Excise Amendment Act 1982	81, 1982	23 Sept 1982	Ss. 1-3 and 71: Royal Assent Ss. 4, 16-21, 23, 28, 29, 32-52, 55-65, 67, 68, 69 (4), 72 and 73: 26 Apr 1983 (*see Gazette* 1983, No. S80) Ss. 5, 7, 9, 10, 12, 14, 15, 25, 54, 66 and 70 (3): (*k*) Ss. 6, 8, 11, 13, 26, 27, 30, 31, 53, 70 (1) and (2): 22 Dec 1983 (*see Gazette* 1983, No. S333) Ss. 22, 24 and 74-76: 2 Dec 1985 (*see Gazette* 1985, No. S490) Remainder: 1 Apr 1985 (*see Gazette* 1985, No. S96)	Ss. 6 (2) and 71

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	S. 3: 22 Dec 1983 (*l*)	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	S. 3: (*m*)	S. 2 (24)
Customs and Excise Legislation Amendment Act 1985	40, 1985	30 May 1985	(see 40, 1985 below)	—
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	(see 5, 1990 below)	—
Diesel Fuel Taxes Legislation Amendment Act 1982	108, 1982	5 Nov 1982	(*n*)	S. 5 (2)
Customs Tariff (Miscellaneous Amendments) Act 1982	115, 1982	22 Nov 1982	Ss. 1, 2, 7 and 8 (1): Royal Assent Remainder: 1 Jan 1983 (see s. 2 and *Gazette* 1982, No. S274, p. 3)	S. 12
Customs Securities (Anti-Dumping) Amendment Act 1982	137, 1982	23 Dec 1982	24 Nov 1982	S. 4 (2)
Customs Amendment Act 1983	19, 1983	14 June 1983	Ss. 5 and 6: 1 July 1983 (see *Gazette* 1983, No. S136, p. 3) Remainder: Royal Assent	S. 2 (2) and (3)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	S. 3: (*p*)	S. 7 (1)
Customs and Excise Amendment Act 1983	101, 1983	23 Nov 1983	S. 4: (*q*) S. 5: 1 Jan 1983 Ss. 8 and 11: Royal Assent Ss. 10 and 12: 1 July 1983 (see s. 2 (5)) Remainder: (*q*)	S. 6 (2)

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Tariff (Anti-Dumping) Miscellaneous Amendments Act 1984	2, 1984	14 Mar 1984	14 Mar 1984	—
Torres Strait Treaty (Miscellaneous Amendments) Act 1984	22, 1984	26 Apr 1984	15 Feb 1985 (*see* s. 2 and *Gazette* 1985, No. S38)	—
Public Service Reform Act 1984	63, 1984	25 June 1984	S. 151 (2): 1 July 1984 (*see Gazette* 1984, No. S245) (*r*)	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	S. 3: (*s*)	Ss. 2 (24) and 5 (2)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	S. 3: 22 Nov 1984 (*t*)	S. 6 (1)
Customs Administration (Transitional Provisions and Consequential Amendments) Act 1985	39, 1985	29 May 1985	10 June 1985 (*see* s. 2 and *Gazette* 1985, No. S194)	S. 4

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs and Excise Legislation Amendment Act 1985	40, 1985	30 May 1985	Ss. 1, 2, 18-20, 21 (2) and 22: Royal Assent Ss. 4, 7, 9-12, 34, 36 and 44: (*u*) S. 8: (*u*) S. 21 (1): 1 Jan 1983 Ss. 24 and 25: 16 Dec 1985 (*see* s. 2 (6)) Part III (ss. 27, 28): 13 Sept 1979 (*see* s. 2 (7)) Ss. 29 and 31: 1 Apr 1985 S. 30: 2 Dec 1985 (*see* s. 2 (9)) S. 35: 29 Nov 1985 (*see Gazette* 1985, No. S490) S. 38: 1 July 1984 (*see* s. 2 (10)) Ss. 45 and 46: 23 July 1984 (*see* s. 2 (11)) Remainder: 27 June 1985	Ss. 2 (5) and 26
as amended by *Customs and Excise Legislation Amendment Act (No. 4) 1989*	5, 1990	17 Jan 1990	(*see* 5, 1990 below)	—
Customs and Excise Legislation Amendment Act (No. 2) 1985	175, 1985	16 Dec 1985	Ss. 3 and 8: Royal Assent (*v*) Ss. 4, 7 and 12: 1 May 1986 (*see Gazette* 1986, No. S182) (*v*) Ss. 5, 11 and 13: 13 Jan 1986 (*v*) S. 6: 2 Dec 1985 (*see Gazette* 1985, No. S490) (*v*) Ss. 9 and 10: 1 Nov 1985 (*v*)	Ss. 8 (2), 9 (2) and 10 (2)

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Administration (Transitional Provisions and Consequential Amendments) Act 1986	10, 1986	13 May 1986	13 May 1986	Ss. 2 (2) and 4
Customs and Excise Legislation Amendment Act 1986	34, 1986	3 June 1986	Ss. 7, 8 (1), 9, 11 and 12: Royal Assent (*w*) Ss. 8 (2), 10 and 13-15: 1 July 1987 (*see* s. 2 (2) and *Gazette* 1987, No. S138) (*w*) Ss. 16-18: 1 July 1986 (*w*)	—
Customs and Excise Legislation Amendment Act (No. 2) 1986	149, 1986	11 Dec 1986	Ss. 5 and 16: 8 Jan 1987 S. 11: 21 Oct 1986 S. 12 (1): 1 Oct 1983 Remainder: Royal Assent	—
Customs (Valuation) Amendment Act 1987	51, 1987	5 June 1987	1 July 1987	S. 3
Customs Tariff (Miscellaneous Amendments) Act 1987	76, 1987	5 June 1987	1 Jan 1988 (*see* s. 2 and *Gazette* 1987, No. S351)	Ss. 4 and 8 S. 8 (2A) (ad. by 89, 1992, s. 23)
as amended by *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992*	89, 1992	30 June 1992	(*see* 89, 1992 below)	—
Customs and Excise Legislation Amendment Act 1987	81, 1987	5 June 1987	Ss. 1 and 2: Royal Assent Ss. 3 (1), 5 and 6: 1 July 1987 Ss. 4 and 7: 14 May 1987 Remainder: 1 Aug 1987 (*see Gazette* 1987, No. S135)	Ss. 3 and 11

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Sea Installations (Miscellaneous Amendments) Act 1987	104, 1987	6 Nov 1987	Parts I-IV (ss. 1-30) and Part VII (s. 57): 15 Oct 1987 Remainder: 6 Nov 1987 (*see* s. 2 (2))	S. 21
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	S. 3: Royal Assent (*x*)	S. 5 (1)
Civil Aviation Act 1988	63, 1988	15 June 1988	Part III (ss. 17-32), s. 98, Parts IX and X (ss. 99-103): 1 July 1988 (*see Gazette* 1988, No. S189) Remainder: Royal Assent	—
Crimes Legislation Amendment Act (No. 2) 1988	66, 1988	15 June 1988	Ss. 4-11: 13 July 1988 Ss. 13-19: 1 Dec 1988 (*see Gazette* 1988, No. S366) S. 24: 15 June 1988 (*see* s. 2 (4)) Part VI (ss. 25-28): 1 Sept 1988 (*see* s. 2 (5) and *Gazette* 1988, No. S256) Remainder: Royal Assent	S. 6 (2) and (3)
as amended by *Law and Justice Legislation Amendment Act 1988*	120, 1988	14 Dec 1988	Part VII (ss. 25-27): 15 June 1988 (*y*)	—
Customs Legislation (Anti-Dumping Amendments) Act 1988	76, 1988	24 June 1988	1 Sept 1988 (*see* s. 2 and *Gazette* 1988, No. S217)	—
Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988	99, 1988	2 Dec 1988	2 Dec 1988	—
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	Part VIII (ss. 28, 29): 11 Jan 1989 (*z*)	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Telecommunications Amendment Act 1988	121, 1988	14 Dec 1988	Ss. 5, 6, 10, 12, 13, 23 (2) and 26 (1): 1 Jan 1989 (*see Gazette* 1988, No. S402) Ss. 14, 23 (3) and 26 (2): 30 June 1989 (*see Gazette* 1989, No. S216) Remainder: Royal Assent	—
Customs and Excise Legislation Amendment Act 1989	23, 1989	5 May 1989	1 July 1989	S. 12
Customs and Excise Legislation Amendment Act (No. 2) 1989	24, 1989	5 May 1989	Ss. 4, 9, 10 and 34-38: 1 Feb 1989 S. 6: 8 July 1988 S. 8 (1) (a): 27 Aug 1987 S. 18: 15 Oct 1987 Ss. 19, 21, 23, 24, 29, 31 and 32: 1 July 1989 Part IV (ss. 44, 45): 16 June 1982 (*see* s. 2 (7)) Remainder: Royal Assent	Ss. 5 (2), 8 (2) and 28 (2)
Customs and Excise Legislation Amendment Act (No. 3) 1989	78, 1989	21 June 1989	S. 5 (1) (c)-(g): 3 Mar 1989 Ss. 6, 8, 16 and 18: 19 July 1989 Remainder: Royal Assent	Ss. 5 (2), (3) and 7 (2)
Crimes Legislation Amendment Act 1989	108, 1989	30 June 1989	S. 10: 30 June 1990 Parts 5-7 (ss. 17-35): 28 July 1989 Part 8 (ss. 36-43): 1 July 1989 Remainder: Royal Assent	Ss. 21 (2), 22 (2), 23 (2) and 25 (2)
Customs Legislation (Anti-Dumping) Act 1989	174, 1989	21 Dec 1989	Ss. 1 and 2: Royal Assent Remainder: 21 Dec 1989 (*see* s. 2 (2) and *Gazette* 1989, No. S395)	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	Ss. 1-3 and 25: Royal Assent Ss. 4 (1) (b), 16, 26 (1) (b), (c) and 33 (in part): 1 July 1989 S. 15: 1 Aug 1989 Remainder: 1 Jan 1990	Ss. 4 (2), 17 (2), 24 and 34
Hazardous Waste (Regulation of Exports and Imports) Act 1989	6, 1990	17 Jan 1990	17 July 1990	—
Law and Justice Legislation Amendment Act 1989	11, 1990	17 Jan 1990	Parts 1 and 3 (ss. 1, 2, 6, 7): Royal Assent Ss. 8-10: 17 July 1990 Ss. 12, 13 and 51 (1) (b), (2): 17 Jan 1990 (*see* s. 2 (5)) Remainder: 14 Feb 1990	—
Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990	37, 1990	7 June 1990	18 Feb 1991 (*see* s. 2 and *Gazette* 1991, No. S47)	—
Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990	70, 1990	16 June 1990	1 July 1990 (*see Gazette* 1990, No. S172)	S. 20 (2)-(7)
Customs (Detention and Search) Act 1990	79, 1990	23 Oct 1990	23 Apr 1991	—
Customs and Excise Legislation Amendment Act 1990	111, 1990	21 Dec 1990	Ss. 1-3, 4 (a)-(d), (g), 5, 11, 27, 30, 34 (d), (e), 35, 36, 37 (in part), 38, 39 and 47-49: Royal Assent Ss. 4 (e), (h), 6-9, 13-23, 28, 29, 31, 32, 34 (a)-(c), and 40-46: 1 June 1991 (*see Gazette* 1991, No. S137) S. 26: 18 Jan 1991 S. 33: 21 Dec 1989 Remainder: 21 June 1991	Ss. 15 (2), 21 (2) and 38

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Crimes Legislation Amendment Act 1991	28, 1991	4 Mar 1991	S. 74 (1): Royal Assent (*za*)	—
Customs Amendment Act 1991	82, 1991	26 June 1991	26 June 1991	S. 9 (2)-(4)
Proceeds of Crime Legislation Amendment Act 1991	120, 1991	27 June 1991	Ss. 1 and 2: Royal Assent Remainder: 27 Dec 1991	—
Crimes Legislation Amendment Act (No. 2) 1991	123, 1991	23 Aug 1991	Ss. 5-10, Parts 3-7 (ss. 11-34), Part 9 (ss. 38, 39) and ss. 40-50: 20 Sept 1991 Part 8 (ss. 35-37): 6 Dec 1991 (*see Gazette* 1991, No. S330) S. 51: 23 Feb 1992 Remainder: Royal Assent	S. 31 (2) and (3)
Customs and Excise Legislation Amendment Act 1992	34, 1992	20 May 1992	Ss. 1-3, 4 (c), (d), 21, 40, 48, 49 (c), 51, 52 and 56: Royal Assent Ss. 10-14, 24, 30-36, 41, 44, 50, 53-55 and 57: 17 June 1992 Remainder: 1 Sept 1992 (*see Gazette* 1992, No. S251)	Ss. 18 (2)-(4), 23 (2) and 50
Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992	89, 1992	30 June 1992	Ss. 1-3, 9, 11 and 22: Royal Assent Ss. 4-8, 12-18 and 21: 10 July 1992 (*see Gazette* 1992, No. S187, p. 2) S. 23: 1 Jan 1988 Remainder: 1 Nov 1992 (*see Gazette* 1992, No. GN43)	Ss. 12 (2), 19 (2) and 21 S. 20 (am. by 8, 1994, s. 23)
as amended by *Customs Legislation Amendment Act 1993*	8, 1994	18 Jan 1994	S. 23 (Schedule 2 [item 3]): 1 Nov 1992 (*zb*)	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Territories Law Reform Act 1992	104, 1992	30 June 1992	S. 24: 1 July 1992 (*zc*)	—
Crimes Legislation Amendment Act 1992	164, 1992	11 Dec 1992	Ss. 3-17: 1 Feb 1993 (*see Gazette* 1993, No. GN1) Remainder: 8 Jan 1993	—
Customs Legislation (Anti-Dumping Amendments) Act 1992	207, 1992	21 Dec 1992	Ss. 1 and 2: Royal Assent S. 8: 10 July 1992 Remainder: 1 Jan 1993 (*see Gazette* 1992, No. S403)	S. 17
as amended by *Customs Legislation Amendment Act 1993*	8, 1994	18 Jan 1994	S. 23 (Schedule 2 [item 2]): 1 Jan 1993 (*zd*)	—
Customs Legislation Amendment Act 1992	209, 1992	22 Dec 1992	Ss. 4 (a), 11, 12, 19, 20 and 22: 1 Sept 1992 Ss. 4 (b), (c), 6-10, 13 (2), 14, 15 (d), 16, 17, 24, 25 and 27: 1 June 1993 (*see Gazette* 1993, No. GN17) Ss. 5 and 23: 19 Jan 1993 S. 21: 18 Aug 1992 Remainder: Royal Assent	—
as amended by *Customs Legislation Amendment Act 1993*	8, 1994	18 Jan 1994	S. 23 (Schedule 2 [item 1]): 18 Aug 1992 (*ze*)	—
Corporate Law Reform Act 1992	210, 1992	24 Dec 1992	S. 125: 23 June 1993 (*see Gazette* 1993, No. S186) (*zf*)	—
Imported Food Control Act 1992	221, 1992	24 Dec 1992	15 June 1993 (*see Gazette* 1993, No. GN22)	S. 10

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs and Excise Legislation Amendment Act 1993	113, 1993	24 Dec 1993	Ss. 1-4, 7 and 9: Royal Assent Ss. 5 (c), 6, 14 and 15 (c): 1 Jan 1994 Ss. 8, 10-13 and 17: 1 Apr 1994 (*see Gazette* 1994, No. S112) Remainder: 24 June 1994	—
Customs Legislation Amendment Act 1993	8, 1994	18 Jan 1994	Ss. 4-7, 14, 16 (1) and 18: Royal Assent (*zg*) S. 8: 1 Sept 1992 (*zg*) Ss. 9, 10 and 20: 1 Apr 1994 (*see Gazette* 1994, No. S112) (*zg*) Ss. 11-13: 15 Feb 1994 (*zg*) Ss. 15 and 16 (2): 1 Nov 1992 (*zg*) S. 17: 5 Jan 1994 (*see* s. 2 (5)) (*zg*) S. 19: 2 May 1994 (*see Gazette* 1994, No. GN15) (*zg*)	S. 3
Maritime Legislation Amendment Act 1994	20, 1994	15 Feb 1994	1 Aug 1994 (*see Gazette* 1994, No. S289)	—
Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994	65, 1994	30 May 1994	30 Nov 1994	—
Customs Legislation (World Trade Organization Amendments) Act 1994	150, 1994	13 Dec 1994	Ss. 1-3: Royal Assent Remainder: 1 Jan 1995 (*see Gazette* 1994, No. S471)	Ss. 3 and 29
Crimes and Other Legislation Amendment Act 1994	182, 1994	19 Dec 1994	S. 31: 16 Jan 1995 (*zh*)	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs, Excise and Bounty Legislation Amendment Act 1995	85, 1995	1 July 1995	S. 6 (items 1, 26-45, 49-53, 56, 67): 1 July 1995 (*zi*) Ss. 6 (items 2-6, 10-15, 17, 57-61, 63-66), 11 (items 51-59) and 13-20: Royal Assent (*zi*) S. 6 (items 7-9, 46-48, 54, 55, 62): 9 Nov 1995 (*see Gazette* 1995, No. GN44) (*zi*) S. 6 (items 16, 18-25): 1 Apr 1994 (*zi*)	Ss. 13-20
Customs and Excise Legislation Amendment Act 1995	87, 1995	1 July 1995	S. 3 (items 2, 6, 7, 10, 11): 1 Aug 1986 (*zj*) Remainder: Royal Assent (*zj*)	Ss. 2 (2), (3) and 5 (am. by 21, 1996, s. 3)
as amended by *Customs and Excise Legislation Amendment Act (No. 1) 1996*	21, 1996	28 June 1996	1 July 1995	—
Customs Tariff (Miscellaneous Amendments) Act 1996	15, 1996	24 June 1996	1 July 1996 (*zk*)	—
Customs Amendment Act 1996	30, 1996	9 July 1996	15 July 1996 (*see Gazette* 1996, No. S263)	Sch. 1 (items 36-43)

(*a*) The *Customs (Inter-State Accounts) Act 1910* was repealed by section 5 of the *Statute Law Revision Act 1973*.

(*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*.

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(c) Section 2 of the *Customs Act (No. 2) 1975* provides as follows:

"2. This Act shall be deemed to have come into operation at the same time as the *Customs Tariff (Coal Export Duty) Act 1975*, and the provisions of the Principal Act as amended by this Act shall be deemed to have had effect from that time for all purposes, including purposes related to acts and things done under the Principal Act as proposed to be so amended or under regulations in force under the Principal Act."

Section 2 of the *Customs Tariff (Coal Export Duty) Act 1975* provides as follows:

"2. This Act shall be deemed to have come into operation at the hour of 8 o'clock in the evening by standard time in the Australian Capital Territory on 19 August 1975."

(d) The *Customs Act 1901* was amended by section 3 only of the *Administrative Changes (Consequential Provisions) Act 1976*, subsection 2 (7) of which provides as follows:

"(7) The amendments of each other Act specified in the Schedule made by this Act shall be deemed to have come into operation on 22 December 1975."

(e) The proposed amendments of the *Customs Act 1901* made by the *Customs Amendment Act 1979* (as amended by the *Customs (Detention and Search) Act 1990*) were repealed before a date was fixed for their commencement.

(f) The *Customs Amendment Act 1979* was amended by Part III (sections 27 and 28) only of the *Customs and Excise Legislation Amendment Act 1985*, subsection 2 (7) of which provides as follows:

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

(g) The *Customs Amendment Act 1979* was amended by Part III (sections 14 and 15) only of the *Customs and Excise Legislation Amendment Act (No. 2) 1985*, subsection 2 (6) of which provides as follows:

"(6) Part III shall come into operation on the day on which section 5 of the *Customs Amendment Act 1979* comes into operation."

Section 5 of the *Customs Amendment Act 1979* was repealed before a date was fixed for the commencement.

(h) The *Customs Act 1901* was amended by section 115 only of the *Statute Law Revision Act 1981*, subsection 2 (1) of which provides as follows:

"(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent."

(i) Sections 13 and 14 of the *Customs Amendment Act 1981* were repealed by section 33 of the *Customs and Excise Legislation Amendment Act (No. 4) 1989* before a date was fixed for their commencement.

(j) The *Customs Act 1901* was amended by Part LXXVII (section 280) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2 (1) of which provides as follows:

"(1) Sections 1, 2, 166 and 195 and Parts III, VI, VII, XVI, XXXVI, XLIV, LI, LIII, LIV, LXI and LXXVII shall come into operation on the day on which this Act receives the Royal Assent."

(k) Sections 5, 7, 9, 10, 12, 14, 15, 25, 54 and 66 of the *Customs and Excise Amendment Act 1982* were repealed by section 33 of the *Customs and Excise Legislation Amendment Act (No. 4) 1989* before a date was fixed for their commencement.

Subsection 70 (3) and Schedule 2, Part III of the *Customs and Excise Amendment Act 1982* were repealed by section 3 of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984* before a date was fixed for their commencement.

NOTES—continued

Table of Acts—continued

(*l*) The *Customs and Excise Amendment Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, paragraph 2 (5) (a) of which provides as follows:

"(5) The amendments of the *Customs and Excise Amendment Act 1982* made by this Act shall come into operation, or shall be deemed to have come into operation, as the case requires:

(a) in the case of the amendments of section 30 of that Act—on the commencement of that section;"

(*m*) The *Customs and Excise Amendment Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsection 2 (10) of which provides as follows:

"(10) The amendments of the *Customs and Excise Amendment Act 1982* made by this Act shall be deemed to have come into operation on 23 September 1982."

(*n*) Section 2 of the *Diesel Fuel Taxes Legislation Amendment Act 1982* provides as follows:

"2. This Act shall be deemed to have come into operation at the hour of 8 o'clock in the evening by standard time in the Australian Capital Territory on 17 August 1982."

(*p*) The *Customs Act 1901* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, subsection 2 (4) of which provides as follows:

"(4) The amendments of the *Customs Act 1901* made by this Act shall:

(a) in the case of the amendments of section 131A of that Act—come into operation, or be deemed to have come into operation, as the case requires, on the commencement of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*;

(b) in the case of the amendment of subsection 273F (2) of that Act—come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent; and

(c) in the case of the other amendments of that Act—be deemed to have come into operation at the hour of 8 o'clock in the evening by standard time in the Australian Capital Territory on 17 August 1982."

The *Wildlife Protection (Regulation of Exports and Imports) Act 1982* came into operation on 1 May 1984 (*see Gazette* 1984, No. S137).

In pursuance of paragraph 2 (4) (b) the date of commencement was 18 July 1983.

(*q*) Subsections 2 (1) and (3) of the *Customs and Excise Amendment Act 1983* provide as follows:

"(1) Subject to this section, this Act shall be deemed to have come into operation at the hour of 8 o'clock in the evening by standard time in the Australian Capital Territory on 23 August 1983.

"(3) Section 4 shall come into operation immediately after the commencement of section 25 of the *Customs and Excise Amendment Act 1982*."

In pursuance of subsection 2 (3) section 25 was repealed by section 33 of the *Customs and Excise Legislation Amendment Act (No. 4) 1989* before a date was fixed for the commencement.

(*r*) The *Customs Act 1901* was amended by subsection 151 (2) only of the *Public Service Reform Act 1984*, subsection 2 (4) of which provides as follows:

"(4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation."

(*s*) The *Customs Act 1901* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsections 2 (1) and (7)-(9) of which provide as follows:

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

"(7) The amendments of the definition of 'Australian installation' in subsection 4 (1) and of paragraph 161A (3) (c) of the *Customs Act 1901* made by this Act shall be deemed to have come into operation on 1 January 1983.

"(8) If the twenty-eighth day after the day on which this Act receives the Royal Assent is an earlier day than the day on which section 22 of the *Customs and Excise Amendment Act 1982* comes into operation, the amendment of section 96A of the *Customs Act 1901* made by this Act shall come into operation on the last-mentioned day.

NOTES—continued

Table of Acts—continued

"(9) If the twenty-eighth day after the day on which this Act receives the Royal Assent is an earlier day than the day on which section 25 of the *Customs and Excise Amendment Act 1982* comes into operation, the amendments of sections 111, 111A and 111D of the *Customs Act 1901* made by this Act and the amendment of that Act inserting section 273GAB made by this Act shall come into operation on the last-mentioned day."

In pursuance of subsection 2 (8) the date of commencement was 2 December 1985 (see *Gazette* 1985, No. S490).

In pursuance of subsection 2 (9) section 25 was repealed by section 33 of the *Customs and Excise Legislation Amendment Act (No. 4) 1989* before a date was fixed for the commencement.

(*t*) The *Customs Act 1901* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2 (1) of which provides as follows:

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

(*u*) Subsections 2 (3) and (4) of the *Customs and Excise Legislation Amendment Act 1985* provide as follows:

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

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

In pursuance of subsection 2 (3) sections 4, 7, 9, 10, 11, 12, 34, 36 and 44 were repealed by section 33 of the *Customs and Excise Legislation Amendment Act (No. 4) 1989* before a date was fixed for their commencement.

(*v*) The *Customs Act 1901* was amended by sections 3-13 only of the *Customs and Excise Legislation Amendment Act (No. 2) 1985*, subsections 2 (1)-(5) of which provide as follows:

"(1) Sections 1, 2, 3, 8 and 16 shall come into operation on the day on which this Act receives the Royal Assent.

"(2) Sections 4, 7, 12, 18 and 21 shall come into operation on a day to be fixed by Proclamation.

"(3) Sections 5, 11 and 13 shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

"(4) Section 6 shall come into operation on the day on which section 22 of the *Customs and Excise Amendment Act 1982* comes into operation.

"(5) Sections 9, 10, 19 and 20 shall be deemed to have come into operation on 1 November 1985."

(*w*) The *Customs Act 1901* was amended by sections 7-18 only of the *Customs and Excise Legislation Amendment Act 1986*, subsections 2 (1)-(3) of which provide as follows:

"(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

"(2) Subsection 8 (2) and sections 10, 13, 14 and 15 shall come into operation on the commencement of the *Protection of Movable Cultural Heritage Act 1986*.

"(3) Sections 16, 17 and 18 shall come into operation on 1 July 1986."

(*x*) The *Customs Act 1901* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2 (1) of which provides as follows:

"(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent."

(*y*) The *Crimes Legislation Amendment Act (No. 2) 1988* was amended by Part VII (sections 25-27) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2 (4) of which provides as follows:

"(4) Part VII shall be taken to have commenced on 15 June 1988."

(*z*) The *Customs Act 1901* was amended by Part VIII (sections 28 and 29) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2 (3) of which provides as follows:

NOTES—continued

Table of Acts—continued

"(3) Parts VIII, IX and XVI (except the provisions referred to in subsection (9)) commence on the twenty-eighth day after the day on which this Act receives the Royal Assent."

(*za*) The *Customs Act 1901* was amended by subsection 74 (1) only of the *Crimes Legislation Amendment Act 1991*, subsection 2 (1) of which provides as follows:

"(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent."

(*zb*) The *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* was amended by section 23 (Schedule 2 [item 3]) only of the *Customs Legislation Amendment Act 1993*, subsection 2 (4) of which provides as follows:

"(4) Section 15, subsection 16 (2) and section 23, so far as it relates to item 3 of Schedule 2, are taken to have commenced on 1 November 1992."

(*zc*) The *Customs Act 1901* was amended by section 24 only of the *Territories Law Reform Act 1992*, subsection 2 (3) of which provides as follows:

"(3) The remaining provisions of this Act commence on 1 July 1992."

(*zd*) The *Customs Legislation (Anti-Dumping Amendments) Act 1992* was amended by section 23 (Schedule 2 [item 2]) only of the *Customs Legislation Amendment Act 1993*, subsection 2 (7) of which provides as follows:

"(7) Section 23, so far as it relates to item 2 of Schedule 2, is taken to have commenced on 1 January 1993."

(*ze*) The *Customs Legislation Amendment Act 1992* was amended by section 23 (Schedule 2 [item 1]) only of the *Customs Legislation Amendment Act 1993*, subsection 2 (6) of which provides as follows:

"(6) Section 23, so far as it relates to item 1 of Schedule 2, is taken to have commenced on 18 August 1992."

(*zf*) The *Customs Act 1901* was amended by section 125 only of the *Corporate Law Reform Act 1992*, subsection 2 (3) of which provides as follows:

"(3) Subject to subsection (4), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation."

(*zg*) The *Customs Act 1901* was amended by sections 4-20 only of the *Customs Legislation Amendment Act 1993*, subsections 2 (1)-(5) and (8) of which provide as follows:

"(1) Sections 1, 2, 3, 4, 5, 6, 7 and 14, subsection 16 (1) and sections 18 and 21 commence on the day on which this Act receives the Royal Assent.

"(2) Section 8 is taken to have commenced on 1 September 1992.

"(3) Sections 11, 12 and 13 commence 28 days after the day on which this Act receives the Royal Assent.

"(4) Section 15, subsection 16 (2) and section 23, so far as it relates to item 3 of Schedule 2, are taken to have commenced on 1 November 1992.

"(5) Section 17 commences, or is taken to have commenced, 14 days after the day on which the *Customs Tariff Amendment Act (No. 2) 1993* receives or received the Royal Assent.

"(8) Subject to subsection (9), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation."

(*zh*) The *Customs Act 1901* was amended by section 31 only of the *Crimes and Other Legislation Amendment Act 1994*, subsection 2 (4) of which provides as follows:

"(4) The amendments made by this Act to the *Australian Federal Police Act 1979*, the *Crimes (Aviation) Act 1991* (other than the amendment made to Schedule 5 to that Act), the *Crimes (Hostages) Act 1989*, the *Crimes (Internationally Protected Persons) Act 1976*, the *Crimes (Overseas) Act 1964*, the *Crimes (Superannuation Benefits) Act 1989*, the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*, the *Customs Act 1901*, the *Director of Public Prosecutions Act 1983*, the *Extradition Act 1988*, the *Financial Transaction Reports Act 1988* and to sections 23 and 59 of the *Proceeds of Crime Act 1987* commence on the 28th day after the day on which this Act receives the Royal Assent."

NOTES—continued

Table of Acts—continued

(*zi*) The *Customs Act 1901* was amended by the *Customs, Excise and Bounty Legislation Amendment Act 1995*, subsections 2 (1) and (3)-(6) of which provide as follows:

"(1) Subject to subsections (2), (3), (4), (5) and (6), this Act commences on the day on which it receives the Royal Assent.

"(3) Items 16 and 18 to 25 of Schedule 4 are taken to have commenced on 1 April 1994.

"(4) Items 7 to 9, 46 to 48, and 54, 55 and 62 of Schedule 4 commence on a day to be fixed by Proclamation.

"(5) Schedules 2 and 3, items 1, 26 to 45, 49 to 53 and 56 and 67 of Schedule 4, Schedule 6, items 6 to 11 of Schedule 7 and Schedules 8 and 10 commence on 1 July 1995.

"(6) If items 7 to 9, 46 to 48, and 54, 55 and 62 of Schedule 4 do not commence under subsection (4) within the period of 6 months commencing on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period."

(*zj*) Subsections 2 (2) and (3) of the *Customs and Excise Legislation Amendment Act 1995* provide as follows:

"(2) Items 2, 6 (only insofar as that item refers to water) and items 7, 10 and 11 of Schedule 1 are taken to have commenced on 1 August 1986.

"(3) Items 1, 1A, 3, 3A, 4, 5, 6 (insofar as that item refers to sand, sandstone, soil, slate, clay (other than bentonite and kaolin), basalt, granite, gravel and limestone (other than agricultural use limestone)) and items 8, 9, 12 and 13 of Schedule 1, and Schedule 2, commence on the day on which this Act receives the Royal Assent."

(*zk*) "2. This Act commences on 1 July 1996 immediately after the commencement of the *Customs Tariff Act 1995*."

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3	am. No. 12, 1923; No. 108, 1952 rs. No. 54, 1959 am. No. 48, 1963; No. 29, 1965; No. 104, 1968 rep. No. 216, 1973
S. 4	am. No. 12, 1923; No. 7, 1935; No. 56, 1950; No. 108, 1952; No. 47, 1953; No. 37, 1957; No. 54, 1959; No. 48, 1963; No. 29, 1965; No. 82, 1965 (as am. by No. 133, 1965); No. 54, 1967; Nos. 14 and 104, 1968; No. 134, 1971; No. 216, 1973; Nos. 28 and 120, 1974; Nos. 91 and 174, 1976; No. 154, 1977; No. 92, 1979 (as am. by No. 40, 1985); Nos. 155 and 180, 1979; No. 110, 1980; Nos. 64 and 152, 1981; Nos. 48, 51, 80 and 115, 1982; Nos. 72 and 165, 1984; Nos. 39 and 175, 1985; No. 34, 1986; Nos. 81, 76 and 104, 1987; Nos. 23, 24 and 78, 1989; Nos. 5, 37, 79 and 111, 1990; No. 82, 1991; Nos. 34, 104 and 209, 1992; Nos. 8, 20 and 65, 1994; No. 85, 1995; No. 15, 1996
S. 4AA	ad. No. 113, 1993
S. 4A	ad. No. 5, 1990 am. No. 111, 1990; No. 85, 1995
S. 5	rs. No. 56, 1951 am. No. 216, 1973; No. 28, 1974; No. 81, 1982
S. 5A	ad. No. 51, 1982 am. No. 104, 1987; No. 85, 1995

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 5B	ad. No. 104, 1987 am. No. 85, 1995
S. 5C	ad. No. 104, 1987
S. 6	rep. No. 28, 1974
S. 7	am. No. 28, 1974; No. 154, 1977; No. 51, 1982; No. 63, 1984 rs. No. 39, 1985 am. No. 85, 1995
S. 8	am. No. 10, 1916 rs. No. 14, 1968 am. No. 51, 1982; No. 39, 1985; No. 34, 1986; No. 85, 1995
S. 8A	ad. No. 12, 1923 rs. No. 14, 1968
S. 9	rs. No. 92, 1979; No. 24, 1989 am. No. 174, 1989; No. 207, 1992
S. 10	rs. No. 92, 1979 rep. No. 39, 1985
S. 11	rs. No. 92, 1979 am. No. 79, 1990
S. 12	rep. No. 47, 1953
S. 13	rs. No. 56, 1951; No. 48, 1963 am. No. 14, 1968; No. 28, 1974; No. 154, 1977; No. 10, 1986; No. 85, 1995
S. 14	am. No. 12, 1923; No. 64, 1981
S. 15	am. No. 12, 1923; No. 108, 1952; No. 54, 1959 rs. No. 110, 1980 am. No. 10, 1986; No. 85, 1995
S. 16	am. No. 12, 1923; No. 108, 1952 rep. No. 110, 1980
S. 17	am. No. 39, 1985; No. 85, 1995
S. 18	rep. No. 110, 1980
S. 19	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 10, 1986; No. 85, 1995
S. 20	rs. No. 54, 1959 rep. No. 104, 1968 ad. No. 209, 1992
S. 21	rs. No. 37, 1957 am. No. 54, 1959 rep. No. 104, 1968
S. 22	rep. No. 80, 1950
S. 23	rs. No. 54, 1959 rep. No. 104, 1968
S. 24	rs. No. 54, 1959 am. No. 28, 1966; No. 54, 1967 rep. No. 104, 1968
S. 25	rs. No. 48, 1963

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 28	am. No. 28, 1966; No. 54, 1967 rs. No. 110, 1980 am. Nos. 39 and 175, 1985; No. 85, 1995
S. 29	rep. No. 110, 1980
Heading to Part III	am. No. 34, 1992
S. 30	am. No. 36, 1910; No. 104, 1968; No. 64, 1981; No. 34, 1986; No. 111, 1990; Nos. 34 and 221, 1992
S. 30A	ad. No. 22, 1984 am. No. 39, 1985; No. 10, 1986; No. 24, 1989; No. 111, 1990; No. 85, 1995
S. 31	am. No. 12, 1923; No. 108, 1952; No. 64, 1981; No. 111, 1990
S. 33	am. No. 28, 1966; No. 54, 1967; No. 104, 1968 rs. No. 64, 1981 am. Nos. 51 and 81, 1982
S. 33A	ad. No. 51, 1982 am. No. 104, 1987; No. 85, 1995
S. 33B	ad. No. 104, 1987 am. No. 85, 1995
S. 35	am. No. 56, 1975
S. 35A	ad. No. 37, 1957 am. No. 104, 1968; No. 28, 1974; No. 154, 1977; No. 64, 1981; No. 34, 1992
S. 36	am. No. 64, 1981 rs. No. 81, 1982 am. Nos. 5 and 111, 1990 rep. No. 34, 1992
S. 37	am. No. 7, 1934; No. 66, 1954; No. 54, 1959; No. 48, 1963; No. 28, 1966; No. 104, 1968; No. 28, 1974; No. 64, 1981 rs. No. 81, 1982 rep. No. 34, 1992
S. 38	rs. No. 81, 1982 rep. No. 34, 1992
S. 38A	ad. No. 81, 1982 rep. No. 34, 1992
S. 38B	ad. No. 81, 1982 am. No. 23, 1989; No. 111, 1990 rep. No. 34, 1992
S. 39	am. No. 12, 1923; No. 7, 1934 rs. No. 64, 1981 am. No. 23, 1989; No. 111, 1990 rep. No. 34, 1992
S. 40	am. No. 28, 1966; No. 54, 1967 rs. No. 64, 1981 am. No. 81, 1982 rep. No. 34, 1992

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 40AA	ad. No. 104, 1968 am. No. 28, 1974; No. 64, 1981; No. 81, 1982 rep. No. 34, 1992
S. 40A	ad. No. 54, 1959 am. No. 28, 1974; No. 64, 1981 rep. No. 81, 1982
S. 40B	ad. No. 54, 1959 am. No. 28, 1966; No. 28, 1974 rs. No. 154, 1977 am. No. 64, 1981 rep. No. 81, 1982
S. 41	am. No. 12, 1923 rep. No. 104, 1968
S. 42	am. No. 108, 1952; No. 37, 1957; No. 28, 1974; Nos. 45, 64, 67 and 157, 1981; No. 137, 1982; No. 76, 1988; No. 174, 1989; Nos. 34 and 207, 1992; No. 150, 1994; No. 85, 1995
S. 43	am. No. 108, 1952 rs. No. 37, 1957
S. 44	am. No. 85, 1995
S. 45	am. No. 77, 1975; Nos. 64 and 67, 1981; No. 76, 1988; No. 207, 1992; No. 150, 1994; No. 85, 1995
S. 48	am. No. 12, 1923
Heading to Div. 1A of Part IV	ad. No. 54, 1959
S. 49	am. No. 12, 1923
S. 49A	ad. No. 110, 1980 am. No. 51, 1982; No. 104, 1987
S. 49B	ad. No. 104, 1987
Div. 1 of Part IV (ss. 50-57)	rep. No. 108, 1952
Div. 1 of Part IV (ss. 50, 51)	ad. No. 108, 1952
S. 50	rs. No. 108, 1952 am. No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 134, 1971; No. 28, 1974; No. 154, 1977; No. 110, 1980; No. 81, 1982; No. 24, 1989
S. 51	am. No. 12, 1923 rs. No. 108, 1952 am. No. 110, 1980
S. 52	am. No. 7, 1934 rep. No. 108, 1952
Ss. 53-56	rep. No. 108, 1952
S. 57	am. No. 12, 1923; No. 7, 1934 rep. No. 108, 1952
Heading to Div. 2 of Part IV	am. No. 12, 1923

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 58	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 51, 1982; No. 104, 1987
S. 58A	ad. No. 104, 1987 am. No. 85, 1995
S. 58B	ad. No. 37, 1990 am. No. 85, 1995
S. 59	am. No. 12, 1923; No. 7, 1934; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 28, 1974; No. 154, 1977 rs. No. 64, 1981 (as am. by No. 51, 1982) am. No. 81, 1982 (as am. by No. 40, 1985); No. 40, 1985; No. 104, 1987; No. 63, 1988
S. 60	am. No. 12, 1923; No. 108, 1952; No. 37, 1957; No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 64, 1981; Nos. 51 and 81, 1982; No. 111, 1990; No. 85, 1995
S. 61	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981 rs. No. 51, 1982 am. No. 104, 1987
S. 62	am. No. 12, 1923; No. 108, 1952 rs. No. 54, 1959 am. No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 28, 1974; No. 64, 1981; No. 81, 1982
S. 63	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
S. 64	rs. No. 12, 1923 am. No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 51, 1982 rs. No. 111, 1990 am. Nos. 34 and 209, 1992
S. 64AA	ad. No. 111, 1990 am. No. 34, 1992; No. 8, 1994
S. 64AB	ad. No. 111, 1990 am. Nos. 34 and 209, 1992; No. 85, 1995
S. 64ABA	ad. No. 209, 1992
S. 64AC	ad. No. 111, 1990 am. No. 34, 1992
S. 64AD	ad. No. 111, 1990 am. No. 209, 1992
S. 64AE	ad. No. 34, 1992
S. 64A	ad. No. 51, 1982
S. 65	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 28, 1974; No. 64, 1981; No. 81, 1982
Ss. 66, 67	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
Div. 3A of Part IV (ss. 67A-67E)	ad. No. 209, 1992
Ss. 67A, 67B	ad. No. 209, 1992
S. 67C	ad. No. 209, 1992 am. No. 85, 1995

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 67D, 67E	ad. No. 209, 1992
S. 68	rs. No. 54, 1959 am. No. 104, 1968 rs. No. 81, 1982; No. 34, 1992
S. 69	rs. No. 81, 1982; No. 34, 1992 am. No. 209, 1992; No. 15, 1996
S. 70	rep. No. 81, 1982 ad. No. 34, 1992 am. No. 209, 1992
S. 71	rs. No. 36, 1910 am. No. 7, 1934 rs. No. 64, 1981 am. No. 81, 1982 rs. No. 34, 1992
S. 71A	ad. No. 104, 1968 am. No. 64, 1981 rs. No. 34, 1992
S. 71B	ad. No. 104, 1968 am. No. 28, 1974; No. 64, 1981; No. 81, 1982 rs. No. 34, 1992 am. No. 209, 1992; No. 8, 1994; No. 85, 1995
S. 71C	ad. No. 34, 1992
S. 71D	ad. No. 34, 1992 am. No. 85, 1995
S. 71E	ad. No. 34, 1992 am. No. 209, 1992; No. 85, 1995
S. 71F	ad. No. 34, 1992 am. No. 8, 1994
Ss. 71G-71K	ad. No. 34, 1992
S. 71L	ad. No. 34, 1992 am. No. 209, 1992; No. 85, 1995
S. 72	am. No. 12, 1923; No. 111, 1960; No. 104, 1968 rs. No. 64, 1981 am. No. 72, 1984; No. 111, 1990; No. 34, 1992
S. 73	am. No. 12, 1923; No. 7, 1934; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982 rs. No. 40, 1985 am. No. 34, 1992
S. 74	am. No. 28, 1966; No. 54, 1967; No. 64, 1981 rs. No. 111, 1990 am. No. 209, 1992
S. 74A	ad. No. 209, 1992
S. 75	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967 rep. No. 104, 1968
S. 76	am. No. 12, 1923
Div. 4A of Part IV (ss. 77A-77C)	ad. No. 34, 1992

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 77A	ad. No. 34, 1992 am. No. 85, 1995
S. 77B	ad. No. 34, 1992
S. 77C	ad. No. 34, 1992 rs. No. 85, 1995
Ss. 77D, 77E	ad. No. 85, 1995
Part V (ss. 78-81, 85, 87, 89, 92, 92A, 93-107, 109, 110)	rep. No. 110, 1980
Part V (ss. 78-102)	ad. No. 110, 1980
S. 78	rs. No. 110, 1980 am. No. 85, 1995
S. 79	am. No. 54, 1959 rs. No. 110, 1980 am. No. 5, 1990; No. 85, 1995
S. 80	rs. No. 12, 1923; No. 110, 1980 am. No. 81, 1982; No. 85, 1995
S. 81	am. No. 12, 1923 rs. No. 110, 1980 am. No. 81, 1982; No. 210, 1992; No. 85, 1995
S. 82	rep. No. 80, 1950 ad. No. 110, 1980 am. No. 81, 1982; No. 210, 1992; No. 85, 1995
S. 83	am. No. 12, 1923 rep. No. 104, 1968 ad. No. 110, 1980 am. No. 81, 1982; No. 10, 1986; No. 85, 1995
S. 84	rep. No. 104, 1968 ad. No. 110, 1980 am. No. 85, 1995
S. 85	rs. No. 12, 1923; No. 110, 1980
S. 86	rep. No. 104, 1968 ad. No. 110, 1980 am. No. 81, 1982; No. 72, 1984; No. 10, 1986; No. 85, 1995
S. 87	rs. No. 110, 1980 am. No. 81, 1982; No. 72, 1984; No. 85, 1995
S. 88	rep. No. 104, 1968 ad. No. 110, 1980
S. 89	rs. No. 110, 1980
S. 90	rep. No. 21, 1906 ad. No. 110, 1980 am. No. 81, 1982; No. 72, 1984
S. 91	rep. No. 21, 1906 ad. No. 110, 1980
S. 92	am. No. 66, 1954; No. 28, 1956; No. 54, 1957; No. 104, 1968 rs. No. 110, 1980

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 92A	ad. No. 111, 1960 am. No. 28, 1966; No. 54, 1967 rep. No. 110, 1980
S. 93	am. No. 28, 1966; No. 54, 1967 rs. No. 110, 1980
S. 94	rs. No. 110, 1980
S. 95	rs. No. 111, 1960; No. 110, 1980 am. No. 157, 1981
S. 96	am. No. 104, 1968 rs. No. 110, 1980
S. 96A	ad. No. 81, 1982 am. No. 72, 1984; No. 175, 1985; No. 111, 1990; No. 85, 1995
S. 96B	ad. No. 175, 1985 am. No. 111, 1990
S. 97	rs. No. 108, 1952 am. No. 28, 1974 rs. No. 110, 1980 am. No. 81, 1982; No. 72, 1984
S. 98	rs. No. 110, 1980 am. No. 5, 1990
S. 99	am. No. 104, 1968 rs. No. 110, 1980; No. 81, 1982 am. No. 111, 1990; No. 34, 1992
Ss. 100-102	rs. No. 110, 1980 am. No. 81, 1982
Part VA (ss. 103-105)	ad. No. 5, 1990
S. 103	am. No. 28, 1966; No. 54, 1967 rep. No. 110, 1980 ad. No. 5, 1990
S. 104	rs. No. 54, 1959 am. No. 28, 1974 rep. No. 110, 1980 ad. No. 5, 1990 am. No. 34, 1992
Heading to s. 105	am. No. 85, 1995
S. 105	rs. No. 54, 1959 rep. No. 110, 1980 ad. No. 5, 1990 am. No. 85, 1995
Ss. 106, 107	rep. No. 110, 1980
S. 108	rep. No. 48, 1963
Ss. 109, 110	rep. No. 110, 1980
S. 111	rep. No. 108, 1952
Heading to Div. 1 of Part VI	ad. No. 111, 1990

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 112	rs. No. 36, 1910 am. No. 19, 1914; No. 7, 1934 rs. No. 56, 1951 am. No. 154, 1977; No. 81, 1982; No. 24, 1989; No. 34, 1992
S. 112A	ad. No. 36, 1910 am. No. 7, 1934 rep. No. 56, 1951
Heading to Div. 2 of Part VI	ad. No. 111, 1990
Div. 2 of Part VI (ss. 113, 114, 114A-114D)	ad. No. 111, 1990
S. 113	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982 rs. No. 111, 1990
S. 114	am. No. 12, 1923 rs. No. 54, 1959; No. 104, 1968 am. No. 107, 1975 rs. No. 154, 1977 am. No. 81, 1982; No. 149, 1986 rs. No. 111, 1990 am. No. 34, 1992
S. 114A	ad. No. 12, 1923 am. No. 28, 1966; No. 54, 1967; No. 28, 1974 rs. No. 154, 1977 am. No. 81, 1982; No. 39, 1985 rs. No. 111, 1990
S. 114B	ad. No. 111, 1990 am. No. 85, 1995
S. 114C	ad. No. 111, 1990 am. Nos. 34 and 209, 1992
S. 114D	ad. No. 111, 1990 am. No. 209, 1992
S. 115	am. No. 12, 1923; No. 108, 1952; No. 54, 1959; No. 28, 1966; No. 54, 1967 rep. No. 104, 1968 ad. No. 154, 1977 am. No. 64, 1981; No. 81, 1982 rs. No. 111, 1990 am. No. 34, 1992
S. 116	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982 rs. No. 111, 1990
S. 117	rs. No. 81, 1982
S. 117A	ad. No. 111, 1990 am. No. 34, 1992; No. 85, 1995
S. 118	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; Nos. 51 and 81, 1982

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 119	rs. No. 12, 1923 am. No. 48, 1963; No. 28, 1974; No. 154, 1977; No. 64, 1981; No. 10, 1986; No. 111, 1990 am. No. 34, 1992; No. 85, 1995
S. 119A	ad. No. 111, 1990 am. No. 34, 1992
Ss. 119B, 119C	ad. No. 111, 1990
S. 119D	ad. No. 111, 1990 am. No. 34, 1992
S. 120	am. No. 12, 1923 rs. No. 54, 1959 am. No. 28, 1966; No. 54, 1967; No. 104, 1968; No. 28, 1974; No. 64, 1981; No. 81, 1982; No. 111, 1990
S. 121	rep. No. 111, 1960
S. 122	am. No. 12, 1923; No. 108, 1952
Heading to Div. 3 of Part VI	am. No. 34, 1992
Div. 3 of Part VI (ss. 122A-122E)	ad. No. 111, 1990
S. 122A	ad. No. 111, 1990 am. No. 85, 1995
Ss. 122B-122E	ad. No. 111, 1990
Heading to Div. 4 of Part VI	ad. No. 111, 1990
S. 123	am. No. 12, 1923; No. 108, 1952; No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 64, 1981
S. 124	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
S. 125	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
S. 126	am. No. 85, 1995
Heading to Div. 5 of Part VI	ad. No. 111, 1990
S. 126A	ad. No. 104, 1987
S. 126B	ad. No. 104, 1987 am. No. 111, 1990
S. 126C	ad. No. 111, 1990 am. No. 85, 1995
Heading to Part VII	am. No. 12, 1923
Part VII (ss. 127-129)	rep. No. 108, 1952
Part VII (ss. 127-130, 130A)	ad. No. 108, 1952
S. 127	am. No. 12, 1923 rs. No. 108, 1952 am. No. 104, 1968; No. 28, 1974; No. 81, 1982; No. 111, 1990
S. 128	am. No. 12, 1923 rs. No. 108, 1952

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 129	am. No. 12, 1923 rs. No. 108, 1952; No. 48, 1963; No. 104, 1968 am. No. 28, 1974; No. 64, 1981; No. 81, 1982
S. 130	ad. No. 108, 1952 am. No. 48, 1963 rs. No. 104, 1968
S. 130A	ad. No. 108, 1952 am. No. 47, 1953; No. 54, 1959 rs. No. 104, 1968 am. No. 28, 1974; No. 64, 1981
S. 130B	ad. No. 48, 1963 rs. No. 104, 1968 am. No. 28, 1974; No. 81, 1982; No. 149, 1986; No. 34, 1992
S. 130C	ad. No. 104, 1968 am. No. 81, 1982; No. 111, 1990
S. 130	rep. No. 45, 1934
S. 131	am. No. 12, 1923 rep. No. 29, 1965
S. 131A	ad. No. 7, 1934 am. No. 162, 1973; No. 64, 1981; No. 39, 1983
S. 131AA	ad. No. 37, 1990
S. 131B	ad. No. 81, 1987
S. 132	rs. No. 48, 1963 am. No. 28, 1974; No. 81, 1982 (as am. by No. 39, 1983); Nos. 34 and 209, 1992
S. 132A	ad. No. 104, 1968
S. 132B	ad. No. 28, 1974 am. No. 64, 1981; No. 81, 1982; No. 10, 1986; No. 34, 1992; No. 85, 1995
Ss. 132C, 132D	ad. No. 28, 1974 am. No. 10, 1986; No. 85, 1995
S. 132E	ad. No. 28, 1974 rep. No. 61, 1981
S. 133	am. No. 107, 1975; No. 177, 1979; No. 15, 1980; No. 72, 1984
S. 136	am. No. 24, 1989
S. 137	am. No. 54, 1947 rep. No. 12, 1971 ad. No. 24, 1989 am. No. 85, 1995
Ss. 138, 139	rep. No. 29, 1965
S. 140	am. No. 7, 1934 rep. No. 29, 1965
S. 141	rep. No. 28, 1966
S. 143	rep. No. 41, 1976
S. 144	rep. No. 29, 1965
S. 146	am. No. 85, 1995

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 149	am. No. 12, 1923; No. 81, 1982; No. 111, 1990
S. 150	am. No. 104, 1968
S. 151	rs. No. 29, 1965 am. No. 133, 1965 rs. No. 82, 1965 (as am. by No. 133, 1965) am. No. 104, 1968; Nos. 28 and 120, 1974; No. 174, 1976; No. 171, 1980; No. 157, 1981; No. 81, 1982 rs. No. 115, 1982 am. No. 19, 1983; No. 175, 1985; Nos. 10 and 149, 1988 rs. No. 76, 1987 am. No. 24, 1989; No. 70, 1990 rep. No. 8, 1994
S. 151A	ad. No. 22, 1925 rs. No. 7, 1934 am. No. 45, 1934; No. 85, 1936 rs. No. 29, 1965 am. No. 133, 1965 rs. No. 82, 1965 (as am. by No. 133, 1965) am. No. 104, 1968; Nos. 28 and 120, 1974; No. 174, 1976; Nos. 61 and 157, 1981 rs. No. 115, 1982 rep. No. 76, 1987
S. 151B	ad. No. 85, 1936 am. No. 111, 1960 rep. No. 29, 1965
S. 152	am. No. 56, 1950; No. 107, 1975; No. 15, 1980
Div. 1A of Part VIII (ss. 153A-153T)	ad. No. 8, 1994
S. 153A	ad. No. 8, 1994
S. 153B	ad. No. 8, 1994 am. No. 15, 1996
S. 153C	ad. No. 8, 1994
S. 153D	ad. No. 8, 1994 am. No. 85, 1995
Subheads to s. 153E (4)-(6)	am. No. 85, 1995
S. 153E	ad. No. 8, 1994 am. No. 85, 1995
Ss. 153F-153H	ad. No. 8, 1994
S. 153J	ad. No. 8, 1994 am. No. 85, 1995
Subhead to s. 153K (3)	am. No. 85, 1995
S. 153K	ad. No. 8, 1994 am. No. 85, 1995
Subhead to s. 153L (2)	am. No. 85, 1995

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 153L	ad. No. 8, 1994 am. No. 85, 1995
S. 153LA	ad. No. 85, 1995
Ss. 153M, 153N	ad. No. 8, 1994
Ss. 153P, 153Q	ad. No. 8, 1994 am. No. 85, 1995
Subhead to s. 153R (1)	am. No. 85, 1995
S. 153R	ad. No. 8, 1994 am. No. 85, 1995
Ss. 153S, 153T	ad. No. 8, 1994
Div. 2 of Part VIII (ss. 154, 157)	rep. No. 157, 1981
Div. 2 of Part VIII (ss. 154-161, 161A-161D)	ad. No. 157, 1981 rep. No. 23, 1989
Div. 2 of Part VIII (ss. 154-161, 161A-161L)	ad. No. 23, 1989
S. 153A	ad. No. 56, 1950 rs. No. 29, 1965 am. No. 133, 1965 rep. No. 41, 1976
S. 154	rs. No. 19, 1922 am. No. 54, 1947; No. 29, 1965; No. 120, 1974 rs. No. 41, 1976 am. No. 183, 1978 rs. No. 157, 1981 am. No. 2, 1984; No. 51, 1987 rs. No. 23, 1989
S. 155	rs. No. 19, 1922 rep. No. 54, 1959 ad. No. 29, 1965 rep. No. 41, 1976 ad. No. 157, 1981 rs. No. 23, 1989
S. 156	rs. No. 19, 1922 rep. No. 54, 1959 ad. No. 157, 1981 am. No. 115, 1982; No. 76, 1987 rs. No. 23, 1989
S. 157	rs. No. 54, 1947 am. No. 28, 1974 rs. No. 157, 1981 am. No. 72, 1984 rs. No. 23, 1989
S. 158	rep. No. 41, 1976 ad. No. 157, 1981 am. No. 72, 1984; No. 51, 1987 rs. No. 23, 1989

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 159	am. No. 28, 1966; No. 54, 1967 rep. No. 41, 1976 ad. No. 157, 1981 am. No. 101, 1983; Nos. 51 and 76, 1987 rs. No. 23, 1989
S. 160	am. No. 29, 1965 rep. No. 41, 1976 ad. No. 157, 1981 rs. No. 23, 1989
S. 161	am. No. 133, 1965; No. 216, 1973 rep. No. 41, 1976 ad. No. 157, 1981 am. No. 51, 1987 rs. No. 23, 1989
S. 161A	ad. No. 157, 1981 am. No. 72, 1984; Nos. 51 and 76, 1987 rs. No. 23, 1989
S. 161B	ad. No. 157, 1981 am. No. 10, 1986 rs. No. 23, 1989
S. 161C	ad. No. 157, 1981 rs. No. 23, 1989
S. 161D	ad. No. 157, 1981 am. No. 51, 1987 rs. No. 23, 1989
Ss. 161E-161H	ad. No. 23, 1989
Ss. 161J-161L	ad. No. 23, 1989 am. No. 85, 1995
Heading to Div. 3 of Part VIII	am. No. 108, 1982
S. 162	am. No. 7, 1934; No. 56, 1950 rs. No. 108, 1952 am. No. 28, 1974; No. 64, 1981; No. 39, 1985; No. 34, 1986; No. 85, 1995
S. 162A	ad. No. 48, 1963 am. No. 14, 1968; No. 28, 1974; No. 64, 1981; No. 81, 1982; No. 39, 1985; No. 34, 1986; No. 85, 1995
S. 162B	ad. No. 104, 1968 am. No. 28, 1974; No. 81, 1982; No. 23, 1989
S. 163	am. No. 6, 1930; No. 7, 1934; No. 108, 1952; No. 47, 1953; No. 104, 1968 rs. No. 12, 1971 am. No. 165, 1984; No. 81, 1987; No. 34, 1992
S. 164	rep. No. 12, 1971 ad. No. 108, 1982 am. Nos. 39 and 101, 1983; No. 175, 1985; No. 81, 1987; No. 99, 1988; Nos. 24 and 78, 1989; No. 5, 1990; No. 34, 1992; No. 209, 1992 (as am. by No. 8, 1994); No. 113, 1993; No. 85, 1995; No. 87, 1995 (as am. by No. 21, 1996)

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 164A	ad. No. 45, 1949 rep. No. 12, 1971 ad. No. 40, 1985 rep. No. 175, 1985 ad. No. 81, 1987 am. No. 34, 1992
S. 164AA	ad. No. 81, 1987 am. No. 78, 1989; No. 34, 1992
S. 164B	ad. No. 56, 1950 am. No. 10, 1986; No. 85, 1995
S. 165	am. No. 104, 1968; Nos. 81 and 108, 1982; No. 78, 1989; No. 85, 1995
S. 165A	ad. No. 78, 1989 am. No. 113, 1993; No. 85, 1995
S. 167	rs. No. 36, 1910 am. No. 12, 1923; No. 48, 1963; No. 28, 1974; No. 64, 1981; No. 78, 1989; Nos. 34 and 209, 1992
S. 168	rs. No. 108, 1952; No. 104, 1968
S. 169	rep. No. 12, 1923
S. 170	am. No. 108, 1952 rep. No. 54, 1959
Ss. 171-174	rep. No. 54, 1959
S. 175	am. No. 12, 1923; No. 108, 1952 rs. No. 81, 1982 am. No. 72, 1984
S. 176	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981 rep. No. 81, 1982
S. 177	am. No. 12, 1923 rep. No. 81, 1982
Ss. 178, 179	rep. No. 81, 1982
Div. 1 of Part XI (s. 179A)	ad. No. 54, 1959 rep. No. 110, 1980
Div. 1 of Part XI (s. 180)	ad. No. 110, 1980
S. 179A	ad. No. 54, 1959 am. No. 28, 1974 rep. No. 110, 1980
S. 180	ad. No. 110, 1980 am. No. 81, 1982; No. 24, 1989; No. 85, 1995
Heading to Div. 2 of Part XI	ad. No. 54, 1959
Div. 2 of Part XI (ss. 180-183)	rep. No. 110, 1980
Div. 2 of Part XI (ss. 181-183, 183A)	ad. No. 110, 1980
S. 180	am. No. 54, 1959 rep. No. 110, 1980

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 181	rs. No. 110, 1980 am. No. 81, 1982; No. 10, 1986; No. 85, 1995
Ss. 182, 183, 183A	rs. No. 110, 1980 am. No. 81, 1982
Div. 3 of Part XI (ss. 183A-183C)	ad. No. 54, 1959 rep. No. 110, 1980
Div. 3 of Part XI (ss. 183B, 183C, 183CA-183CP)	ad. No. 110, 1980
S. 183A	ad. No. 54, 1959 am. No. 28, 1974 rep. No. 110, 1980
S. 183B	ad. No. 54, 1959 am. No. 216, 1973; No. 28, 1974 rs. No. 110, 1980 am. No. 81, 1982
S. 183C	ad. No. 54, 1959 am. No. 216, 1973 rs. No. 110, 1980 am. No. 85, 1995
S. 183CA	ad. No. 110, 1980 am. No. 81, 1982; No. 85, 1995
S. 183CB	ad. No. 110, 1980 am. No. 85, 1995
S. 183CC	ad. No. 110, 1980 am. No. 81, 1982; No. 10, 1986; No. 210, 1992; No. 85, 1995
Ss. 183CD, 183CE	ad. No. 110, 1980 rs. No. 81, 1982 am. No. 85, 1995
S. 183CF	ad. No. 110, 1980 am. No. 81, 1982; No. 85, 1995
S. 183CG	ad. No. 110, 1980 am. No. 81, 1982; No. 210, 1992; No. 85, 1995
S. 183CH	ad. No. 110, 1980
S. 183CJ	ad. No. 110, 1980 am. No. 81, 1982; No. 10, 1986; No. 24, 1989; No. 85, 1995
S. 183CK	ad. No. 110, 1980 am. No. 85, 1995
S. 183CL	ad. No. 110, 1980
Ss. 183CM-183CP	ad. No. 110, 1980 am. No. 81, 1982; No. 85, 1995
Div. 4 of Part XI (ss. 183CQ-183CU)	ad. No. 110, 1980
S. 183CQ	ad. No. 110, 1980 am. No. 81, 1982; No. 10, 1986; No. 24, 1989; No. 85, 1995
Heading to s. 183CR	am. No. 85, 1995

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 183CR	ad. No. 110, 1980 am. No. 72, 1984; No. 10, 1986; No. 24, 1989; No. 85, 1995
Heading to s. 183CS	am. No. 85, 1995
S. 183CS	ad. No. 110, 1980 am. No. 81, 1982; No. 72, 1984; No. 10, 1986; No. 85, 1995
S. 183CT	ad. No. 110, 1980 am. No. 81, 1982
S. 183CU	ad. No. 110, 1980
Heading to Div. 4 of Part XI	rep. No. 110, 1980
Heading to Div. 5 of Part XI	ad. No. 110, 1980
Div. 5 (formerly Div. 4) of Part XI	ad. No. 54, 1959
S. 183D	ad. No. 54, 1959 am. No. 216, 1973; No. 28, 1974 rs. No. 110, 1980 am. No. 10, 1986; No. 24, 1989; No. 85, 1995
S. 183DA	ad. No. 110, 1980 am. Nos. 80 and 81, 1982; No. 10, 1986; No. 85, 1995
S. 183DB	ad. No. 110, 1980 am. No. 81, 1982
S. 183DC	ad. No. 110, 1980 am. No. 81, 1982; No. 10, 1986; No. 85, 1995
S. 183DD	ad. No. 110, 1980 am. Nos. 80 and 81, 1982; No. 10, 1986; No. 85, 1995
Ss. 183E-183H	ad. No. 54, 1959 am. No. 110, 1980
S. 183J	ad. No. 54, 1959 am. No. 28, 1974; No. 110, 1980
S. 183K	ad. No. 54, 1959 am. No. 110, 1980
S. 183L	ad. No. 54, 1959 am. No. 64, 1981
S. 183M	ad. No. 54, 1959 am. No. 28, 1974 rep. No. 110, 1980
S. 183N	ad. No. 54, 1959 am. No. 110, 1980
S. 183P	ad. No. 54, 1959 am. No. 28, 1966; No. 110, 1980
S. 183Q	ad. No. 54, 1959 am. No. 28, 1974 rs. No. 110, 1980 am. No. 81, 1982
S. 183R	ad. No. 54, 1959 am. No. 216, 1973; No. 110, 1980

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 183S	ad. No. 54, 1959 am. No. 110, 1980; No. 10, 1986; No. 85, 1995
Ss. 183T, 183U	ad. No. 54, 1959 am. No. 110, 1980
Subdiv. A of Div. 1 of Part XII (ss. 183UA-183UC)	ad. No. 85, 1995
Ss. 183UA-183UC	ad. No. 85, 1995
Heading to Subdiv. B of Div. 1 of Part XII	ad. No. 85, 1995
S. 184	am. No. 12, 1923; No. 108, 1952 rs. No. 64, 1981 (as am. by No. 51, 1982) am. No. 81, 1982
S. 185	am. No. 12, 1923; No. 7, 1934; No. 108, 1952; No. 28, 1966; No. 54, 1967 rs. No. 64, 1981 (as am. by No. 51, 1982) am. No. 85, 1995
S. 187	am. No. 12, 1923; No. 64, 1981 rs. No. 51, 1982 am. No. 104, 1987; No. 24, 1989; No. 111, 1990
S. 188	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981; Nos. 51 and 81, 1982
S. 189	am. No. 12, 1923; No. 64, 1981; No. 51, 1982
S. 190	am. No. 110, 1980
S. 191	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981; Nos. 51 and 81, 1982
S. 192	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
S. 194	am. No. 64, 1981
S. 195	am. No. 36, 1910; No. 12, 1923 rs. No. 110, 1980 am. No. 51, 1982; No. 104, 1987; No. 79, 1990
S. 196	am. No. 36, 1910; No. 61, 1981; No. 175, 1985 rep. No. 79, 1990
S. 196C	ad. No. 64, 1981 am. No. 34, 1992
S. 197	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982 rs. No. 209, 1992; No. 85, 1995
S. 197A	ad. No. 111, 1960 am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982 rep. No. 85, 1995
Heading to Subdiv. C of Div. 1 of Part XII	ad. No. 85, 1995
S. 198	am. No. 14, 1968; No. 216, 1973; No. 19, 1979 rs. No. 85, 1995

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 199	am. No. 36, 1910; No. 66, 1954; No. 37, 1957 rs. No. 48, 1963 am. No. 14, 1968; No. 28, 1974 rs. No. 85, 1995
Ss. 200, 201	am. No. 12, 1923 rs. No. 85, 1995
S. 202	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982 rs. No. 85, 1995
S. 202A	ad. No. 85, 1995
Heading to Subdiv. D of Div. 1 of Part XII	ad. No. 85, 1995
S. 203	am. No. 12, 1923 rs. No. 64, 1981; No. 85, 1995
S. 203A	ad. No. 34, 1986
Renumbered s. 203T	No. 85, 1995
Ss. 203A-203D	ad. No. 85, 1995
Heading to Subdiv. E of Div. 1 of Part XII	ad. No. 85, 1995
Ss. 203E-203Q	ad. No. 85, 1995
Heading to Subdiv. F of Div. 1 of Part XII	ad. No. 85, 1995
Ss. 203R, 203S	ad. No. 85, 1995
Heading to Subdiv. G of Div. 1 of Part XII	ad. No. 85, 1995
S. 203T	
Renumbered	No. 85, 1995
S. 204	rs. No. 110, 1980; No. 64, 1981 am. No. 34, 1986 rs. No. 85, 1995
S. 205	am. No. 12, 1923; No. 48, 1963; No. 14, 1968 rs. No. 64, 1981 am. No. 81, 1982 rs. No. 85, 1995
Ss. 205A-205G	ad. No. 85, 1995
S. 206	am. No. 12, 1923; No. 14, 1968 rs. No. 64, 1981 am. No. 81, 1982 rs. No. 85, 1995
S. 207	am. No. 110, 1980; No. 64, 1981 rs. No. 64, 1981; No. 85, 1995
S. 208	am. No. 12, 1923 rs. No. 64, 1981 am. No. 81, 1982; No. 85, 1995 rs. No. 85, 1995

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 208A	ad. No. 64, 1981 am. No. 157, 1981; No. 81, 1982; No. 182, 1994 rep. No. 85, 1995
S. 208B	ad. No. 64, 1981 rep. No. 85, 1995
S. 208C	ad. No. 64, 1981 am. No. 85, 1995
S. 208D	ad. No. 64, 1981 am. No. 120, 1991; No. 164, 1992; No. 85, 1995
S. 208DA	ad. No. 120, 1991 am. No. 81, 1982; No. 164, 1992; No. 85, 1995
S. 208E	ad. No. 64, 1981 am. No. 85, 1995
S. 209	rs. No. 110, 1980 am. No. 81, 1982; No. 24, 1989; No. 111, 1990; No. 85, 1995
S. 209A	ad. No. 85, 1995
Heading to Subdiv. H of Div. 1 of Part XII	ad. No. 85, 1995
S. 210	rs. No. 36, 1910 am. No. 54, 1959; No. 28, 1966; No. 54, 1967; No. 92, 1979; No. 64, 1981; No. 81, 1982
S. 211	rep. No. 54, 1959
S. 214	am. No. 12, 1923; No. 56, 1950; No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 14, 1968; No. 28, 1974; No. 64, 1981 rep. No. 85, 1995
Heading to Subdiv. J of Div. 1 of Part XII	ad. No. 85, 1995
S. 214AA	ad. No. 23, 1989 am. No. 5, 1990; No. 34, 1992; No. 8, 1994; No. 85, 1995
S. 214AB	ad. No. 23, 1989 am. No. 5, 1990; No. 8, 1994; No. 85, 1995
S. 214AC	ad. No. 23, 1989 am. No. 85, 1995
S. 214A	ad. No. 108, 1982 am. No. 39, 1983; No. 2, 1984; No. 5, 1990; No. 34, 1992
S. 214B	ad. No. 2, 1984 am. No. 5, 1990
Heading to Subdiv. K of Div. 1 of Part XII	ad. No. 85, 1995
S. 214BA	ad. No. 85, 1995
S. 216	am. No. 64, 1981 rep. No. 81, 1982
Div. 1A of Part XII (ss. 219A-219K)	ad. No. 92, 1979
S. 219A	ad. No. 92, 1979 am. No. 180, 1979; No. 66, 1988; No. 11, 1990; No. 85, 1995

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 219AA	ad. No. 11, 1990
S. 219AB	ad. No. 11, 1990 rep. No. 82, 1991
S. 219B	ad. No. 92, 1979 am. Nos. 116 and 180, 1979; Nos. 66 and 121, 1988; No. 11, 1990
S. 219C	ad. No. 92, 1979 am. No. 81, 1982
S. 219D	ad. No. 92, 1979 am. No. 180, 1979 rs. No. 66, 1988
S. 219E	ad. No. 92, 1979 am. No. 180, 1979; No. 66, 1988
S. 219F	ad. No. 92, 1979 am. Nos. 116 and 180, 1979; No. 66, 1988; No. 11, 1990
S. 219G	ad. No. 92, 1979 am. No. 180, 1979; No. 81, 1982; No. 66, 1988; No. 11, 1990
S. 219H	ad. No. 92, 1979 am. No. 180, 1979; No. 66, 1988
S. 219J	ad. No. 92, 1979 rep. No. 180, 1979
S. 219K	ad. No. 92, 1979 am. No. 180, 1979; No. 66, 1988 (as am. by No. 120, 1988)
Div. 1B of Part XII (ss. 219L-219Z, 219ZA-219ZJ)	ad. No. 79, 1990
S. 219L	ad. No. 79, 1990
S. 219M	ad. No. 79, 1990 am. No. 85, 1995
Ss. 219N, 219P	ad. No. 79, 1990
S. 219Q	ad. No. 79, 1990 am. No. 85, 1995
S. 219R	ad. No. 79, 1990 am. No. 34, 1992; No. 85, 1995
S. 219RA	ad. No. 82, 1991
S. 219S	ad. No. 79, 1990
Ss. 219T-219V	ad. No. 79, 1990 am. No. 85, 1995
S. 219W	ad. No. 79, 1990
Ss. 219X, 219Y	ad. No. 79, 1990 am. No. 85, 1995
S. 219Z	ad. No. 79, 1990
S. 219ZA	ad. No. 79, 1990 am. No. 85, 1995
S. 219ZB	ad. No. 79, 1990

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 219ZC	ad. No. 79, 1990 am. No. 85, 1995
Ss. 219ZD-219ZG	ad. No. 79, 1990
S. 219ZH	ad. No. 79, 1990 am. No. 85, 1995
S. 219ZJ	ad. No. 79, 1990
Div. 1C of Part XII (ss. 219ZK, 219ZL)	ad. No. 79, 1990
S. 219ZK	ad. No. 79, 1990
S. 219ZL	ad. No. 79, 1990 rs. No. 82, 1991
S. 220	am. No. 12, 1923
S. 221	am. No. 216, 1973; No. 19, 1979
S. 225	am. No. 64, 1981
S. 226	am. No. 7, 1934; No. 42, 1960; No. 48, 1963; No. 28, 1974; No. 64, 1981
S. 227	am. No. 216, 1973; No. 19, 1979
S. 228	am. No. 36, 1910 rs. No. 12, 1923 am. No. 7, 1934; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 216, 1973; No. 64, 1981; No. 51, 1982; No. 24, 1989
S. 228A	ad. No. 51, 1982 am. No. 104, 1987; No. 85, 1995
S. 228B	ad. No. 104, 1987 am. No. 85, 1995
S. 229	am. No. 21, 1906; No. 12, 1923; No. 7, 1934; No. 56, 1950; No. 108, 1952; No. 104, 1968; No. 216, 1973; No. 110, 1980; No. 64, 1981; No. 34, 1986; No. 24, 1989; Nos. 5, 6 and 111, 1990; No. 85, 1995
S. 229A	ad. No. 154, 1977 am. No. 92, 1979; No. 110, 1980; No. 64, 1981; No. 85, 1995
S. 230	am. No. 92, 1979
S. 231	rs. No. 7, 1934 am. No. 54, 1967; No. 134, 1971; No. 28, 1974; No. 64, 1981; No. 81, 1982
S. 232	am. No. 7, 1934; No. 64, 1981
S. 232A	ad. No. 7, 1934 am. No. 54, 1959; No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 64, 1981
S. 233	rs. No. 36, 1910 am. No. 12, 1923; No. 108, 1952; No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 134, 1971; Nos. 64 and 152, 1981; Nos. 48 and 81, 1982
S. 233AA	ad. No. 152, 1981 rep. No. 48, 1982

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 233A	ad. No. 36, 1910 am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 134, 1971; No. 28, 1974; No. 64, 1981; No. 81, 1982
S. 233AB	ad. No. 81, 1982
S. 233B	ad. No. 36, 1910 am. No. 12, 1923; No. 54, 1967; No. 134, 1971; No. 28, 1974; No. 92, 1979; No. 64, 1981; No. 149, 1986; No. 111, 1990
S. 233BA	ad. No. 24, 1989 am. No. 111, 1990; No. 85, 1995
S. 234	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 154, 1977; No. 64, 1981; No. 81, 1982; No. 24, 1989; No. 111, 1990; No. 34, 1992; No. 85, 1995
S. 234AA	ad. No. 110, 1980 am. No. 40, 1985
S. 234A	ad. No. 108, 1952 am. No. 37, 1957; No. 28, 1966; No. 54, 1967; No. 110, 1980; No. 64, 1981; No. 81, 1982; No. 40, 1985
S. 234AB	ad. No. 40, 1985
S. 234AC	ad. No. 111, 1990 am. Nos. 34 and 209, 1992
S. 235	rep. No. 48, 1963 ad. No. 54, 1967 am. No. 134, 1971; No. 28, 1974 rs. No. 154, 1977 am. No. 92, 1979; No. 81, 1982; No. 165, 1984; No. 111, 1990
S. 238	am. No. 28, 1966; No. 54, 1967; No. 61, 1981 rep. No. 81, 1982
S. 240	am. No. 64, 1981 rep. No. 81, 1982 ad. No. 23, 1989 am. No. 111, 1990; No. 8, 1994; No. 85, 1995
S. 240A	ad. No. 34, 1992 am. No. 85, 1995
S. 240B	ad. No. 34, 1992
S. 241	rep. No. 81, 1982 ad. No. 111, 1990 am. No. 34, 1992
S. 242	am. No. 64, 1981 rep. No. 81, 1982
S. 243	am. No. 133, 1965; No. 28, 1974 rep. No. 81, 1982
Div. 3 of Part XIII (ss. 243A-243S)	ad. No. 92, 1979
S. 243A	ad. No. 92, 1979 am. No. 180, 1979; No. 13, 1980; No. 64, 1981; No. 80, 1982; No. 108, 1989; No. 120, 1991
S. 243AB	ad. No. 108, 1989

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 243B	ad. No. 92, 1979 am. No. 64, 1981; No. 108, 1989; No. 85, 1995
S. 243C	ad. No. 92, 1979 am. No. 180, 1979; No. 108, 1989; No. 28, 1991
S. 243CA	ad. No. 108, 1989 am. No. 85, 1995
S. 243D	ad. No. 92, 1979
S. 243E	ad. No. 92, 1979 am. No. 180, 1979; No. 13, 1980; No. 64, 1981; No. 81, 1982; No. 108, 1989; No. 123, 1991; No. 85, 1995
S. 243F	ad. No. 92, 1979 am. No. 13, 1980; No. 64, 1981; No. 81, 1982; No. 120, 1988; No. 108, 1989; No. 123, 1991; No. 85, 1995
S. 243G	ad. No. 92, 1979 am. No. 13, 1980; No. 64, 1981 rs. No. 108, 1989 am. No. 120, 1991; No. 164, 1992; No. 85, 1995
Ss. 243H, 243J	ad. No. 92, 1979 am. No. 13, 1980; No. 108, 1989
S. 243K	ad. No. 92, 1979 am. No. 13, 1980 rs. No. 108, 1989 am. No. 85, 1995
S. 243L	ad. No. 92, 1979 am. No. 13, 1980; No. 64, 1981; No. 108, 1989; No. 85, 1995
S. 243M	ad. No. 92, 1979 rs. No. 13, 1980 am. No. 108, 1989; No. 120, 1991
S. 243N	ad. No. 92, 1979 am. No. 13, 1980; No. 108, 1989
Ss. 243NA, 243NB	ad. No. 141, 1987
Ss. 243P, 243Q	ad. No. 92, 1979 am. No. 13, 1980 rs. No. 108, 1989
Ss. 243R, 243S	ad. No. 92, 1979
Div. 4 of Part XIII (ss. 243T-243V)	ad. No. 24, 1989
S. 243T	ad. No. 24, 1989 am. No. 34, 1992; No. 85, 1995
S. 243U	ad. No. 24, 1989 am. No. 5, 1990; No. 85, 1995
S. 243V	ad. No. 24, 1989 am. No. 34, 1992
S. 244	am. No. 108, 1952; No. 92, 1979
S. 245	am. No. 28, 1966; No. 216, 1973; No. 19, 1979; No. 64, 1981 rs. No. 81, 1982 am. No. 24, 1989; No. 5, 1990; No. 85, 1995

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 245A	ad. No. 36, 1910 am. No. 149, 1986 rep. No. 24, 1989
S. 246	am. No. 28, 1966; No. 216, 1973; No. 19, 1979; No. 64, 1981 rep. No. 81, 1982
S. 247	am. No. 216, 1973; No. 19, 1979; No. 81, 1982
S. 248	am. No. 12, 1923; No. 19, 1979
S. 249	am. No. 64, 1981
S. 250	am. No. 81, 1982
S. 250A	ad. No. 36, 1910
S. 251	am. No. 81, 1982
S. 253	am. No. 10, 1986; No. 85, 1995
S. 255	rs. No. 12, 1923
S. 256	am. No. 14, 1968; No. 85, 1995
S. 257	rep. No. 81, 1982 ad. No. 40, 1985
S. 258	rep. No. 37, 1957
S. 258A	ad. No. 7, 1934 rep. No. 37, 1957
S. 260	rep. No. 37, 1957
S. 262	rep. No. 85, 1995
S. 263	rs. No. 48, 1963 am. No. 216, 1973; No. 28, 1974
S. 264	am. No. 64, 1981; No. 81, 1982; No. 10, 1986; No. 85, 1995
Heading to Part XV	rs. No. 40, 1985
Part XV (ss. 265-268, 268A, 269)	rep. No. 110, 1980
Part XV (ss. 265-269, 269A)	ad. No. 45, 1981
S. 265	am. No. 36, 1910 rep. No. 110, 1980 ad. No. 45, 1981 am. No. 19, 1983; No. 40, 1985
S. 266	rep. No. 110, 1980 ad. No. 45, 1981 am. No. 157, 1981; No. 40, 1985
S. 267	rep. No. 110, 1980 ad. No. 45, 1981 am. No. 76, 1987; No. 24, 1989; No. 85, 1995; No. 15, 1996
S. 268	am. No. 28, 1966; No. 54, 1967 rep. No. 110, 1980 ad. No. 45, 1981 am. Nos. 39 and 40, 1985; No. 85, 1995
S. 268A	ad. No. 48, 1963 am. No. 28, 1966 rep. No. 110, 1980

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 269	rep. No. 110, 1980 ad. No. 45, 1981 am. No. 39, 1985; No. 85, 1995
S. 269A	ad. No. 45, 1981
Part XVA (ss. 269B-269S)	ad. No. 19, 1983 rep. No. 89, 1992
Part XVA (ss. 269B-269S, 269SA-269SL)	ad. No. 89, 1992
S. 269B	ad. No. 19, 1983 am. No. 39, 1985; No. 34, 1986; No. 76, 1987 rs. No. 89, 1992 am. No. 85, 1995; Nos. 15 and 30, 1996
S. 269C	ad. No. 19, 1983 am. No. 39, 1985; No. 34, 1986 rs. No. 89, 1992; No. 30, 1996
S. 269D	ad. No. 19, 1983 am. No. 39, 1985; No. 76, 1987 rs. No. 89, 1992 am. No. 85, 1995
S. 269E	ad. No. 19, 1983 am. No. 39, 1985; No. 34, 1986; No. 5, 1990 rs. No. 89, 1992 am. No. 30, 1996
S. 269F	ad. No. 19, 1983 am. No. 39, 1985 rs. No. 89, 1992 am. No. 85, 1995; No. 30, 1996
S. 269G	ad. No. 19, 1983 am. No. 39, 1985 rs. No. 89, 1992 am. No. 85, 1995
S. 269FA	ad. No. 30, 1996
S. 269G	ad. No. 19, 1983 am. No. 39, 1985 rs. No. 89, 1992 am. No. 85, 1995
S. 269H	ad. No. 39, 1985 rs. No. 89, 1992 am. No. 85, 1995; No. 30, 1996
S. 269HA	ad. No. 85, 1995
S. 269J	ad. No. 19, 1983 am. No. 39, 1985; No. 149, 1986 rs. No. 89, 1992 am. No. 85, 1995
Ss. 269K, 269L	ad. No. 19, 1983 am. No. 39, 1985 rs. No. 89, 1992 am. No. 85, 1995; No. 30, 1996

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 269M	ad. No. 19, 1983 rs. No. 89, 1992 am. No. 85, 1995; No. 30, 1996
S. 269N	ad. No. 19, 1983 am. No. 39, 1985; No. 5, 1990 rs. No. 89, 1992 am. No. 85, 1995; No. 30, 1996
S. 269P	ad. No. 19, 1983 am. Nos. 39 and 40, 1985; No. 10, 1986; No. 5, 1990 rs. No. 89, 1992 am. No. 85, 1995; No. 30, 1996
S. 269Q	ad. No. 19, 1983 rs. No. 89, 1992 am. No. 85, 1995
S. 269R	ad. No. 19, 1983 am. No. 39, 1985 rs. No. 89, 1992 am. No. 85, 1995
S. 269S	ad. No. 19, 1983 am. No. 39, 1985; No. 99, 1988 rs. No. 89, 1992 am. No. 30, 1996
Ss. 269SA, 269SB	ad. No. 89, 1992 am. No. 85, 1995; No. 30, 1996
S. 269SC	ad. No. 89, 1992 am. No. 8, 1994; No. 85, 1995; No. 30, 1996
Ss. 269SD, 269SE	ad. No. 89, 1992 am. No. 85, 1995; No. 30, 1996
S. 269SF	ad. No. 89, 1992 am. No. 85, 1995
S. 269SG	ad. No. 89, 1992 am. No. 8, 1994; No. 30, 1996
S. 269SH	ad. No. 89, 1992 am. No. 8, 1994; No. 85, 1995
S. 269SHA	ad. No. 30, 1996
Heading to s. 269SJ	am. No. 85, 1995; No. 30, 1996
S. 269SJ	ad. No. 89, 1992 am. No. 85, 1995; No. 30, 1996
S. 269SK	ad. No. 89, 1992 am. No. 85, 1995
S. 269SL	ad. No. 89, 1992
Part XVB (ss. 269T-269V)	ad. No. 2, 1984
Heading to Div. 1 of Part XVB	ad. No. 174, 1989

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 269T	ad. No. 2, 1984 rs. No. 76, 1988 am. No. 174, 1989; Nos. 5 and 111, 1990; No. 82, 1991; No. 89, 1992; No. 207, 1992 (as am. by No. 8, 1994); No. 150, 1994; No. 85, 1995
S. 269TAAA	ad. No. 70, 1990
Ss. 269TAAB-269TAAD	ad. No. 150, 1994
S. 269TAA	ad. No. 174, 1989
Ss. 269TAB, 269TAC	ad. No. 174, 1989 am. No. 150, 1994
S. 269TACA	ad. No. 207, 1992
Ss. 269TACB, 269TACC	ad. No. 150, 1994
S. 269TAD	ad. No. 174, 1989 rep. No. 207, 1992
S. 269TAE	ad. No. 174, 1989 am. No. 150, 1994
S. 269TAF	ad. No. 174, 1989 rs. No. 150, 1994
S. 269TAG	ad. No. 174, 1989 rep. No. 150, 1994
S. 269TAH	ad. No. 174, 1989 am. No. 207, 1992 rep. No. 150, 1994
S. 269TAJ	ad. No. 174, 1989 am. No. 150, 1994
Heading to s. 269TA	am. No. 85, 1995
S. 269TA	ad. No. 76, 1988 am. No. 85, 1995
Heading to Div. 2 of Part XVB	ad. No. 174, 1989 am. No. 85, 1995
S. 269TB	ad. No. 76, 1988 am. No. 89, 1992; No. 150, 1994
S. 269TC	ad. No. 76, 1988 am. No. 174, 1989; Nos. 89 and 207, 1992; No. 150, 1994; No. 85, 1995
S. 269TD	ad. No. 76, 1988 am. No. 207, 1992; No. 150, 1994; No. 85, 1995
S. 269TDA	ad. No. 150, 1994
Heading to s. 269TE	am. No. 85, 1995
S. 269TE	ad. No. 76, 1988 am. No. 82, 1991; Nos. 89 and 207, 1992; No. 85, 1995
S. 269TF	ad. No. 76, 1988 am. No. 150, 1994; No. 85, 1995
Heading to Div. 3 of Part XVB	ad. No. 174, 1989

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 269TG	ad. No. 174, 1989 am. Nos. 89 and 207, 1992; No. 150, 1994; No. 85, 1995
S. 269TH	ad. No. 174, 1989 am. No. 207, 1992; No. 150, 1994; No. 85, 1995
S. 269TJ	ad. No. 174, 1989 am. Nos. 89 and 207, 1992; No. 150, 1994; No. 85, 1995
S. 269TJA	ad. No. 89, 1992 am. No. 150, 1994
S. 269TK	ad. No. 174, 1989 am. No. 207, 1992; No. 150, 1994; No. 85, 1995
S. 269TL	ad. No. 174, 1989 am. No. 150, 1994
S. 269TM	ad. No. 174, 1989 am. No. 82, 1991; Nos. 89 and 207, 1992
S. 269TN	ad. No. 174, 1989 am. No. 207, 1992; No. 150, 1994
S. 269TP	ad. No. 174, 1989
S. 269U	ad. No. 2, 1984 am. No. 39, 1985; No. 76, 1988; No. 174, 1989; No. 85, 1995
Div. 4 of Part XVB (ss. 269V-269Y)	ad. No. 207, 1992
S. 269V	ad. No. 2, 1984 rep. No. 76, 1988 ad. No. 207, 1992 am. No. 85, 1995
S. 269W	ad. No. 207, 1992 am. No. 150, 1994; No. 85, 1995
Ss. 269X, 269Y	ad. No. 207, 1992 am. No. 85, 1995
Div. 5 of Part XVB (ss. 269Z, 269ZA-269ZD)	ad. No. 207, 1992
S. 269Z	ad. No. 207, 1992 am. No. 85, 1995
S. 269ZA	ad. No. 207, 1992
Ss. 269ZB, 269ZC	ad. No. 207, 1992 am. No. 85, 1995
S. 269ZD	ad. No. 207, 1992
Divs. 6 and 7 of Part XVB (ss. 269ZE-269ZJ)	ad. No. 150, 1994
Ss. 269ZE-269ZH	ad. No. 150, 1994
S. 269ZI	ad. No. 150, 1994 am. No. 15, 1996
S. 269ZJ	ad. No. 150, 1994
Heading to Part XVI	am. No. 108, 1952

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 270	am. No. 36, 1910; No. 12, 1923; No. 28, 1966; No. 54, 1967; Nos. 64 and 152, 1981; Nos. 48 and 81, 1982; No. 175, 1985; No. 24, 1989
Heading to s. 271	am. No. 85, 1995
S. 271	rep. No. 12, 1923 ad. No. 108, 1952 rs. No. 47, 1953 am. No. 29, 1965; No. 39, 1985; No. 85, 1995
Ss. 272, 273	rep. No. 9, 1910 ad. No. 47, 1953 am. No. 29, 1965; No. 39, 1985; No. 85, 1995
S. 273A	ad. No. 47, 1953 am. No. 39, 1985; No. 85, 1995
Ss. 273B-273D	ad. No. 47, 1953
S. 273E	ad. No. 47, 1953 rep. No. 29, 1965
S. 273EA	ad. No. 42, 1960 am. No. 48, 1963; No. 28, 1974; No. 64, 1981
S. 273F	ad. No. 47, 1953 am. No. 29, 1965; No. 39, 1983; No. 76, 1987; No. 8, 1994; No. 15, 1996
S. 273G	ad. No. 92, 1979
S. 273GAA	ad. No. 72, 1984 am. No. 34, 1992; No. 85, 1995
S. 273GA	ad. No. 110, 1980 am. No. 157, 1981; Nos. 81 and 108, 1982; No. 19, 1983; No. 72, 1984; Nos. 39 and 175, 1985; No. 10, 1986; Nos. 81 and 104, 1987; Nos. 23, 24 and 78, 1989; No. 111, 1990; Nos. 34, 89 and 209, 1992; No. 85, 1995; No. 30, 1996
S. 273H	ad. No. 110, 1980 rs. No. 115, 1982 am. No. 72, 1984; No. 10, 1986; No. 76, 1987; No. 85, 1995; No. 15, 1996
S. 273HA	ad. No. 15, 1996
S. 273J	ad. No. 72, 1984
S. 273JA	ad. No. 40, 1985
S. 273K	ad. No. 72, 1984 am. No. 40, 1985
S. 273L	ad. No. 8, 1994
S. 274	am. No. 12, 1923; No. 56, 1950; No. 14, 1968; No. 10, 1986; Nos. 5 and 111, 1990; No. 85, 1995
S. 275	am. No. 12, 1923; No. 56, 1950; No. 110, 1980; Nos. 5 and 111, 1990; No. 85, 1995
S. 275A	ad. No. 48, 1963 am. No. 28, 1966; No. 14, 1968; No. 28, 1974; No. 64, 1981; No. 81, 1982; No. 85, 1995
S. 276	am. No. 81, 1982

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 277	am. No. 12, 1923; No. 36, 1978; No. 81, 1982
S. 277A	ad. No. 51, 1982
S. 278	ad. No. 7, 1934 rep. No. 80, 1950 ad. No. 104, 1968
Schedule I	am. No. 28, 1974; No. 154, 1977
Schedule II	rep. No. 12, 1923
Schedule III	am. No. 14, 1968; No. 28, 1974; No. 154, 1977; No. 110, 1980 rep. No. 85, 1995
Schedule IV	am. No. 12, 1923; No. 66, 1954; No. 37, 1957; No. 48, 1963; No. 28, 1974; No. 154, 1977; No. 110, 1980 rep. No. 85, 1995
Schedule V	ad. No. 12, 1923 am. No. 56, 1950; No. 48, 1963; No. 28, 1974; No. 154, 1977 rep. No. 85, 1995
Schedule VI	ad. No. 134, 1971 rs. No. 154, 1977; No. 111, 1990
Schedule VII	ad. No. 41, 1976 rep. No. 157, 1981 ad. No. 8, 1994
Schedule VIII	ad. No. 92, 1979 rep. No. 111, 1990

2. Sections 42 (1C), 209 (3A) and 229A (8)—Sections 6 (items 40 and 53) and 11 (item 51) of the *Customs, Excise and Bounty Legislation Amendment Act 1995* provide as follows:

SCHEDULE 4

40. Subsection 209 (3A):

(b) Omit "in lieu of seizing the goods under this section", substitute "instead of seizing the goods under a seizure warrant".

53. Subsection 229A (8):

Omit "under section 203", substitute "under a seizure warrant".

SCHEDULE 9

51. Amendment of several provisions:

The provisions set out below are amended by omitting "Comptroller" (wherever occurring) and substituting "CEO":

subsection 42 (1C)

The proposed amendments were misdescribed and are not incorporated in this reprint.

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ATTORNEY-GENERAL'S DEPARTMENT

ISBN 0-644-47202-2

9 780644 472029

A70012 Cat. No. 96 0483 9