



CUSTOMS ACT 1901

Reprinted as at 31 March 1984



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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*.

Commencement

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

Interpretation

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

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

“Airport” means an airport appointed under section 15.

“Airport owner” includes the occupier of an airport.

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

“Australian installation” means an installation that is deemed to be part of Australia by virtue of the operation of section 6AA of the *Customs Tariff Act 1982*;

“Australian seabed” means so much of the seabed adjacent to Australia 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 waters” means waters above the Australian seabed;

“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.

“Carriage” includes vehicles and conveyances of all kinds.

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

“Commercial quantity” means—

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

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

“Comptroller” means the Comptroller-General of Customs.

"Continental shelf" has the same meaning as in the Convention on the Continental Shelf, being the convention a copy of which in the English language is set out in Schedule 1 to the *Petroleum (Submerged Lands) Act 1967*;

"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 installation.

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

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

"Documents" includes books.

"Drawback" includes bounty or allowance.

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

"Duty" means duty of Customs.

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

"Goods" includes—

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

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

"Installation" means—

- (a) an off-shore industry fixed structure; or
- (b) an off-shore industry mobile unit;

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

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

"Master" means—

- (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;

“Member of the Australian Federal Police” includes a special member of the Australian Federal Police.

“Narcotic goods” means goods that consist of a narcotic substance.

“Narcotic-related goods” means—

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

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

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

“Officer” or “Officer of Customs” means a person—

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

“Overseas installation” means an 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 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 every person acting as agent for the owner or to receive freight or other charges payable in respect of the ship or aircraft.

“Parts beyond the seas” means any country outside of Australia.

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

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

"Place" includes ship or aircraft.

"Port" means a port appointed under section 15.

"prescribed narcotic substance" means a narcotic substance the name of which is specified in Column 1 of Schedule VIII or any other narcotic substance for the time being declared by the regulations to be a prescribed narcotic substance.

"Produce documents" means that the person on whom the obligation to produce documents is cast shall to the best of his power produce to the Collector all documents relating to the subject matter mentioned.

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

- (a) 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.

"The Customs" means the Department.

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

"This Act" includes all regulations made thereunder.

"Traffickable quantity", in relation to a narcotic substance, means—

- (a) where the name of the substance is specified in column 1 of Schedule VI—the quantity that is specified in column 2 of that Schedule opposite to the name of the substance; and
- (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 traffickable quantity in relation to that substance.

"Warehouse" means a place that a person or partnership is licensed under section 79 to use for warehousing goods.

"Warehoused goods" means—

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

"Wharf" means a wharf appointed under section 15.

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

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

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(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.

(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 an off-shore 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 an off-shore 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 sub-paragraph (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-sub-paragraph (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 an off-shore

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 sub-paragraph (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 sub-paragraph (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 an installation; or
- (b) manoeuvring an installation, or in operations relating to the attachment of an installation to the Australian seabed.

(9) An 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 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.

Penalties at foot of sections or sub-sections

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

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

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

PART II—ADMINISTRATION

Attachment of overseas installations

5A. (1) A person shall not, without the permission of the Comptroller given under sub-section (2), cause an overseas installation to be attached to the Australian seabed.

Penalty: \$50,000.

(2) The Comptroller may, by notice in writing given to a person who has applied for permission to cause an overseas 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 sub-section (2) shall not refuse or fail to comply with any condition (including a condition imposed or varied under sub-section (4)), to which that permission is subject.

Penalty: \$10,000.

(4) Where the Comptroller has, under sub-section (2), given a person permission to cause an overseas installation to be attached to the Australian seabed, the Comptroller 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 sub-section (2), conditions to which a permission given under that sub-section 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 Comptroller for examination for quarantine purposes before the installation is attached to the Australian seabed.

Comptroller-General

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

Collectors of Customs

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

(2) A reference in sub-section (1) to a State shall be read as including a reference to—

- (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) A reference in sub-section (1) to the Northern Territory shall be read as including a reference to 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 by Minister

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

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

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

Delegation by Comptroller

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

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

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

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

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

- (a) for the performance by all or any of the persons who from time to time hold office as Judges of the Supreme Court of that Territory and are not also Judges of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory of the functions of a Judge under Division 1A of Part XII; and
- (b) for the performance by all or any of the persons who from time to time hold office as Magistrates in that Territory of the functions of a Magistrate under sections 196 and 196A.

Customs Seal

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

(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 Minister directs.

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

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

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

(c) in the case of the stamp in the custody of the Collector of Customs for the Northern Territory—the words “Northern Territory”.

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

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

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, &c.

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

Appointment of sufferance wharfs, &c.

17.² The Minister 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 Minister may in writing declare to be requisite.

Penalty: \$100.

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.

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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

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

PART III—CUSTOMS CONTROL EXAMINATION ENTRIES AND SECURITIES GENERALLY**Customs control of goods**

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

- (a) As to all goods imported—from the time of importation until the goods are dealt with—
 - (i) in accordance with an entry of the goods for home consumption;
 - (ii) by virtue of an approval under section 71A;
 - (iii) by virtue of permission given under section 71B; or
 - (iv) by virtue of permission given under section 162A,or until exportation to parts beyond the seas whichever shall first happen.
- (b) As to all goods in respect of which a claim for drawback has been made before exportation of the goods to parts beyond the seas—from the time the claim is made until the goods are exported, the claim is withdrawn or the claim is disallowed, whichever first occurs.
- (c) As to all goods subject to any export duty—from the time when the same are brought to any port or place for exportation until the payment of the duty.

- (d) As to all goods for export, the exportation of which is subject to compliance with any condition or restriction under any Act or regulation—from the time the goods are made or prepared in, or are brought into, any prescribed place for export, until their exportation to parts beyond the seas.

Goods on ships and aircraft subject to Customs control

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

Right of examination

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

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

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

Penalty: \$1,000.

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

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

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

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

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

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

Installations subject to the control of the Customs

33A. (1) Except with permission in force under sub-section (2), a person shall not use an Australian 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) A Collector 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 installation that is subject to the control of the Customs.

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

Penalty: \$10,000.

(4) Where a Collector has, under sub-section (2), given a person permission to engage in any activities in relation to an Australian installation, the Collector 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 39 or by authority of a permission given under section 40AA, taken from a place for removal to another place;
- (b) the goods are not, or part of the goods is not, delivered to that other place; and

- (c) when so requested by a Collector, the person who made the entry or to whom the permission was given, as the case may be, does not account for the goods, or for that part of the goods, as the case may be, to the satisfaction of a Collector,

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

(1B) Where—

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

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

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

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

(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.

Entry of goods

36. (1) Subject to sub-section (2) and section 37, an entry in respect of goods that are required or eligible to be entered shall be made by the owner of the goods giving to an appropriate Collector in a manner prescribed by the regulations an entry in respect of the goods containing the particulars required by the regulations and, on the giving of the entry, the goods shall, for the purposes of this Act, be taken to be entered.

(2) The regulations may prescribe circumstances in which an entry under sub-section (1) in respect of goods may be given to a Collector other than an appropriate Collector.

(3) In this section—

“appropriate Collector” means—

- (a) in relation to goods that have been imported and are being entered pursuant to section 68—
 - (i) a Collector for the place where the goods are situated at the time when the entry is being made; or
 - (ii) where permission for the removal of the goods from the port or airport at which they have been, or are to be, discharged to another place has been given under section 40AA, a Collector for that other place;
- (b) in relation to goods that have not been imported and are being entered pursuant to section 68, other than goods to which paragraph (c), (d) or (e) applies—
 - (i) a Collector for the place at which the goods are to be discharged; or
 - (ii) where permission for the removal of the goods from the port or airport at which they are to be discharged to another place has been given under section 40AA, a Collector for that other place;
- (c) in relation to goods—
 - (i) that consist of a ship, or an aircraft, that is to be imported otherwise than in a ship or an aircraft;
 - (ii) that have not been imported; and
 - (iii) that are being entered pursuant to section 68,
a Collector for the place at which the goods are proposed to be imported;
- (d) in relation to goods—
 - (i) that are on a ship;
 - (ii) that have not been imported;
 - (iii) that are being entered pursuant to section 68; and
 - (iv) that the owner of the ship has the option of discharging at any one of 2 or more particular ports,
a Collector who is—
 - (v) a Collector for—
 - (A) where the owner of the ship has informed the owner of the goods in writing of the port at which he proposes to discharge the goods—that port; or
 - (B) where the ship has arrived at, and departed from, all but one of those ports—the port from which the ship has not departed; or
 - (vi) where permission for the removal of the goods from the port at which they are to be discharged to another place

has been given under section 40AA, a Collector for that other place;

(e) in relation to goods—

- (i) that are on an aircraft;
- (ii) that have not been imported;
- (iii) that are being entered pursuant to section 68; and
- (iv) that the owner of the aircraft has the option of discharging at any one of 2 or more particular airports,

a Collector who is—

(v) a Collector for—

(A) where the owner of the aircraft has informed the owner of the goods in writing of the airport at which he proposes to discharge the goods—that airport; or

(B) where the aircraft has landed at, and departed from, all but one of those airports—the airport from which the aircraft has not departed; or

(vi) where permission for the removal of the goods from the airport at which they are to be discharged to another place has been given under section 40AA, a Collector for that other place;

(f) in relation to goods that are being entered pursuant to section 128, a Collector for the place where the goods are situated at the time when the entry is being made;

(g) in relation to goods that are being entered pursuant to section 99, a Collector for the place at which the warehouse in which the goods are warehoused is situated; and

(h) in relation to goods that are being entered pursuant to section 114, a Collector for—

(i) where the goods consist of a ship, or an aircraft, that is to be exported otherwise than in a ship or an aircraft—the place of proposed exportation; or

(ii) in any other case—the place at which the goods are to be loaded for export;

“Collector”, in relation to a place, means—

(a) the principal officer of Customs doing duty at that place at the relevant time; or

(b) any officer doing duty at that place in relation to entries.

Advance entries

37. (1) The owner of goods that are intended to be imported, being goods that are in a ship or an aircraft that has not arrived at a port or an airport at which goods are intended to be discharged from the ship or aircraft, may, in a

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manner prescribed by the regulations, give an entry in respect of the goods containing the particulars required by the regulations to—

- (a) a Collector at the port or airport at which the goods are to be discharged; or
- (b) where permission has been given under section 40AA to remove the goods from the port or airport at which they are to be discharged to another place, a Collector for that other place within the meaning of section 36,

and those goods shall, for the purposes of this Act, be taken to be entered if and when the goods arrive at the first port or airport at which goods are intended to be discharged from the ship or aircraft.

(2) The owner of a ship or an aircraft that is intended to be imported, being a ship or an aircraft that is to be imported otherwise than in a ship or an aircraft and that has not arrived at a port or an airport, as the case may be, may, in a manner prescribed by the regulations, give an entry in respect of the ship or aircraft containing the particulars required by the regulations to a Collector at the port or airport, as the case may be, at which the ship or aircraft is proposed to be imported, and that ship or aircraft shall, for the purposes of this Act, be taken to be entered if and when the ship arrives at a port or the aircraft arrives at an airport, as the case may be.

Withdrawal of entries

38. (1) The owner of goods in respect of which an entry has been given under section 36 may, by giving notice in writing to the Collector to whom the entry was given that he wishes to do so, withdraw that entry at any time before duty in respect of the goods is paid.

(2) The owner of goods in respect of which an entry has been given under section 37 may, by giving notice in writing to the Collector to whom the entry was given that he wishes to do so, withdraw that entry at any time before duty in respect of the goods is paid, including any time before the goods are taken to be entered by virtue of that entry.

(3) Where—

- (a) duty in respect of goods has remained unpaid for a period of 30 days commencing on the day on which the goods were entered;
- (b) after the expiration of that period, the Collector has given notice in writing to the owner of the goods requiring payment of duty within a further period specified in the notice; and
- (c) the duty has not been paid within that further period,

that entry shall be deemed to have been withdrawn under sub-section (1) or (2), as the case requires.

(4) Where an entry in respect of goods is withdrawn under this section—

- (a) if the entry is in writing, the withdrawal does not entitle the owner of the goods to have the entry returned to him; and

- (b) a person may be prosecuted in respect of the entry, and a penalty may be imposed on a person who is convicted of an offence in respect of the entry, as if the entry had not been withdrawn.

(5) Where—

(a) an entry in respect of goods—

(i) has been withdrawn under sub-section (1); or

(ii) has been withdrawn under sub-section (2) after the goods have been taken to have been entered;

(b) the entry was for home consumption;

(c) the goods have subsequently been entered again for home consumption, whether or not they were entered for warehousing after the withdrawal and before they were subsequently entered for home consumption; and

(d) but for this sub-section, the rate of duty applicable to the goods would, by reason of a reduction of a rate of duty that occurred before the withdrawal, be less than the rate of duty that would have been applicable to the goods if there had been no withdrawal,

the goods shall, notwithstanding the withdrawal, be taken, for the purposes of section 132, to have been entered for home consumption at the time when they were entered by virtue of the entry that was withdrawn.

Entry subsequent to entry for home consumption

38A. Where an entry for home consumption has been given under section 36 or 37 in respect of goods, a person shall not purport to give a further entry in respect of those goods, or any part of those goods, unless the first-mentioned entry has been withdrawn under section 38.

Penalty: \$1,000.

Information and documents relating to entries, &c.

38B. (1) Without limiting the generality of section 39, where goods have been entered, a Collector may refuse to give authority under that section for the goods to be dealt with in accordance with the entry if he has not verified, and he is not satisfied that another Collector has verified, particulars of the goods shown in the entry by reference to information contained in commercial documents relating to the goods that have been furnished to a Collector by the owner of the goods upon, or at any time after, the giving of the entry to a Collector or by reference to information, in writing, in respect of the goods that has been so furnished to a Collector.

(2) A Collector may, by notice in writing, require the owner of goods in respect of which an entry has been given and which have been imported, or are proposed to be exported, to deliver to him the commercial documents in respect of the goods that are in his possession or under his control (including any such documents that had previously been delivered to a Collector and had been returned to the owner), or to deliver to the Collector such information, in

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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 Collector may ask the owner of, or any person giving an entry in respect of, goods referred to in sub-section (2) any questions relating to the goods.

(4) A Collector may require from the owner of any goods referred to in sub-section (2) proof, by declaration or the production of documents, that the goods are owned as claimed and are properly described, valued, or rated, for duty.

(5) Where—

- (a) the owner of goods in respect of which an entry has been given has been required to deliver documents or information under sub-section (2) in relation to the goods;
- (b) the owner of, or person giving an entry in respect of, goods in respect of which an entry has been given has been asked a question under sub-section (3) in respect of the goods; or
- (c) the owner of goods referred to in sub-section (2) has been required under sub-section (4) to produce proof of a matter in respect of the goods,

a Collector shall not give authority under section 39 for the relevant goods to be dealt with in accordance with the entry 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 a Collector under this section, the Collector shall deal with the document in accordance with the regulations and then return the document to that person.

(7) In this section, “commercial document”, in relation to goods, means a document prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage of goods.

Authority to deal with goods

39. (1) Subject to this Act, where an entry in respect of goods has been made, the Customs may give authority in accordance with the regulations for those goods to be dealt with in accordance with that entry.

(2) Authority under this section to deal with goods may be expressed to be subject to the condition that authority for the goods to be dealt with is given under the *Quarantine Act 1908* or another law of the Commonwealth under which authority to deal with goods may be required, and, for the purposes of this Act, where authority under this section is expressed to be subject to such a condition, it shall be deemed not to have been given unless and until the authority, or each authority, referred to in the condition has been given.

(3) Authority under this section to deal with goods in accordance with an entry may be suspended in accordance with the regulations at any time before the goods are dealt with in accordance with the entry.

Goods to be dealt with according to entry

40.² Where authority for goods to be dealt with in accordance with an entry has been given under section 39, the owner of the goods shall forthwith deal with the goods in accordance with the entry.

Penalty: \$250.

Permission to remove goods subject to Customs control without entry

40AA.² (1) A Collector may give permission in writing to a person specified in the permission to remove goods of a kind specified in the permission that are subject to the control of the Customs from a place so specified to another place so specified and, until the permission is revoked, the permission is authority for the person to remove goods of that kind that are subject to the control of the Customs accordingly.

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

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

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

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

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

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

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

Right to require security

42. (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 39 to deal with the goods.

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

(1B) The right of the Customs under sub-section (1) to require and take a security includes the right to require and take securities in respect of any duty that may be payable on goods under the *Customs Tariff (Anti-Dumping) Act 1975*.

(2) The right of the Customs under sub-section (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 sub-section and for a purpose or purposes for which security may be taken under section 16 of the *Excise Act 1901-1957* and the succeeding provisions of this Part apply to and in relation to such a security in the same manner as they apply to and in relation to any other security required and taken under sub-section (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 Comptroller be accepted to cover all transactions for such time and for such amount as the Comptroller 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 Comptroller.

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

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

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

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

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

(3) Where a notice under sub-section (1) has been served in respect of a ship or an aircraft, a Collector may, before the expiration of the period specified in the notice, or, if that period has been extended under sub-section (2), that period as extended, revoke that notice by serving, in accordance with sub-section (4), a notice in respect of the ship or aircraft stating that the first-mentioned notice is revoked.

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

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

- (a) a newspaper circulating generally in the State or Territory in which the ship or aircraft is situated, or, in the case of a ship or seaplane that is not in a State or Territory, in the State or Territory that is adjacent to the place where the ship or seaplane is situated; and

- (b) if that newspaper does not circulate in the locality in which the ship or aircraft is situated—a newspaper (if any) circulating in that locality.

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

(7) Where—

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

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

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

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

Division 1—Prohibited Imports

Prohibition of the importation of goods

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

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

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

(3) Without limiting the generality of paragraph (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 sub-section (4) in respect of the failure.

(3A) Without limiting the generality of sub-paragraph (3) (b) (ii), a condition referred to in that sub-paragraph may be a condition that, before the expiration of a period specified in the permission or that period as extended with the approval of the Collector, that person, or, if that person is a natural person who dies before the expiration of that period or that period as extended, as the case may be, the legal personal representative of that person, shall export, or cause the exportation of, the goods from Australia.

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

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

Prohibited imports

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

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

Division 2—The Boarding of Ships and Aircraft

Entry at places other than 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 sub-section (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 sub-section (2) shall not refuse or fail to comply with any condition (including a condition imposed or varied under sub-section (4)) to which that permission is subject.

Penalty: \$10,000.

(4) Where a Collector has, under sub-section (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 sub-section (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 installation.

Ships and aircraft to obey signals

59.² (1) The person in command of any ship in the service of the Commonwealth on which the prescribed ensign of the ship is flying may, by means of an international signal code or other internationally recognized means of communication between ships, request the master of—

- (a) any Australian ship; or
- (b) any ship within 12 nautical miles of the coast of Australia or within 500 metres of an Australian 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 coast of Australia or within 500 metres of an Australian 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 sub-section (1) or (2).

(4) The person in command of any aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is or are displayed may, by means of an international signal code or other internationally recognized means of communication between aircraft, request the pilot of—

(a) any Australian aircraft; or

(b) any aircraft flying over—

(i) Australia;

(ii) the waters within 12 nautical miles of the coast of Australia; or

(iii) the waters within 500 metres of an Australian 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 sub-section (4).

(6) This section has effect subject to the obligations of Australia under international law, including obligations under any treaty or convention or any other agreement between Australia and another country or other countries.

(7) In this section—

“Australian aircraft” has the same meaning as it has in the *Air Navigation Act 1920*;

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

Penalty: \$500.

Boarding stations

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

Penalty: \$250.

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

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

Penalty: \$250.

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

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

Penalty: \$250.

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

Facility for boarding

61. The master of any ship or the pilot of any aircraft permitting his ship or aircraft to be boarded, or the master of an 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 unloading

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

Penalty: \$100.

Ship or aircraft not to be moved without authority

63.² No ship or aircraft after arrival at the proper place of mooring or unloading shall except by authority or by direction of the harbour or aerial

authority be removed therefrom before the discharge of the cargo intended to be discharged at the port or airport.

Penalty: \$100.

Division 3—The Report of the Cargo

Report of cargo

64.^{2 and 3} (1) As to every ship or aircraft arriving at a port or airport from parts beyond the seas—

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

Penalty: \$500.

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 sub-section (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

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

Penalty: \$100.

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

Penalty: \$100.

65A.² * * * * *

Goods derelict to be delivered to officer

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

Penalty: \$100.

Interference with derelict goods

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

Penalty: \$100.

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

Imported goods to be entered

68. (1) Subject to this Act, goods that are imported are required to be entered—

- (a) for home consumption;
- (b) for warehousing; or
- (c) for transshipment.

(2) Goods in a ship that are intended to be imported may be entered at any time after the ship arrives at a port at which any goods are to be discharged from the ship.

(3) Goods in an aircraft that are intended to be imported may be entered at any time after the aircraft lands at an airport at which any goods are to be discharged from the aircraft.

(4) A ship that is intended to be imported otherwise than in another ship or in an aircraft may be entered at any time after the ship arrives at a port.

(5) An aircraft that is intended to be imported otherwise than in a ship or in another aircraft may be entered at any time after the aircraft lands at an airport.

Sight entries

69. (1) The regulations may provide for the making of, and the effect of, an entry, to be known as a "sight entry", by an owner of goods that are required or eligible to be entered who does not have sufficient information in relation to the goods to enable him to make an entry in respect of the goods under section 36.

(2) A sight entry shall not be taken to be an entry for the purposes of a provision of this Act other than a provision specified in the regulations.

Complete entry of goods after sight entry

71.² Where goods have been included in a sight entry, a person shall not make an entry in respect of those goods as required by section 68 other than an entry that refers to that sight entry.

Penalty: \$250.

71AA.²

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Permission to deliver prescribed goods for home consumption without entry

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

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

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

Permission to deliver goods of approved kind for home consumption without entry

71B.² (1) A Collector may give permission in writing to a person specified in the permission to deliver for home consumption from a place specified in the permission goods of a kind so specified that are subject to the control of the Customs, and, until the permission is revoked, the permission is authority for that person to deliver for home consumption from that place goods of that kind that are subject to the control of the Customs (other than goods that a

Collector has directed are not to be delivered for home consumption under this section or goods that may be delivered for home consumption by authority of sub-section (1) of the last preceding section) notwithstanding that an entry of the goods for home consumption has not been made under this Act.

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

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

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

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

(5) Subject to sub-section (6), a permission under sub-section (1) does not authorize the delivery of goods in respect of which a quota order under sub-section 132B (3) is in force at any time if the Customs would have the right under sub-section 132B (8), if the goods were entered for home consumption under sub-section 36 (1) at that time, to take security with respect to the goods for the protection of the revenue of the Customs.

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

Failure to make entries

72.² (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 the goods to be removed to a warehouse or such other place of security as the Collector directs.

(2) Where goods that have been, or may be, removed under sub-section (1) are live animals or are of a perishable or hazardous nature and a Collector considers it expedient to do so without delay, the Collector may sell the goods.

(3) A Collector has a lien on goods for any expenses incurred by him in connection with their removal under sub-section (1) and for any warehouse rent or similar charges incurred in relation to the goods.

(4) Where—

(a) goods are removed under sub-section (1); and

(b) all things that are required to be done to enable authority to deal with the goods to be given under section 39, including the making of an entry in respect of the goods, are not done within such period commencing on the removal of the goods as is prescribed,

a Collector may sell those goods.

(5) A period prescribed for the purposes of sub-section (1) or paragraph (b) of sub-section (4) may be a period prescribed in relation to all goods or in relation to goods in a class of goods.

Breaking bulk

73.² The bulk cargo of a ship or aircraft arriving within 12 nautical miles of the coast shall not be broken except with the permission of the Collector or as regards goods authority to deal with which has been given under section 39.

Penalty: \$500.

Authority for unshipment

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

(1) A Collector's permit; or

(2) Authority to deal with the goods given under section 39.

Penalty: \$500.

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

76.² 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.

PART V—WAREHOUSES

Interpretation

78.² (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 Comptroller shall be read as including a reference to a Collector of Customs for a State or Territory.

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

- (a) he has authority to direct the operations of the warehouse or to direct activities in the warehouse, the removal of goods from the warehouse, or another important part of the operations of the warehouse; or
- (b) he has authority to direct a person who has authority referred to in paragraph (a) in the exercise of that authority.

Warehouse licences

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

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

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

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 Comptroller 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 Comptroller 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 Comptroller shall not grant a warehouse licence if, in his opinion—

- (a) where the applicant is a natural person—the applicant is not a fit and proper person to hold a warehouse licence;
 - (b) where the applicant is a partnership—any of the partners is not a fit and proper person to be a member of a partnership holding a warehouse licence;
 - (c) where the applicant is a company—any director, officer or shareholder of the company who would participate in the management or control of the warehouse is not a fit and proper person so to participate;
 - (d) an employee of the applicant who would participate in the management or control of the warehouse is not a fit and proper person so to participate;
 - (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 Comptroller 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 Comptroller 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;
- (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—the company is convicted of an offence referred to in paragraph 81 (3) (a) or (b), a receiver of the property or part of the property of the company is appointed, the company is placed under official management or the company commences 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

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

Duration of warehouse licence

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 Minister 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 Minister determines having regard to that cost.

(3) Subject to sub-section (4), where a warehouse licence has not been renewed and goods remain in the former warehouse, the Comptroller 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 Comptroller, 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 Comptroller 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 sub-section (3) need not be published as mentioned in that sub-section but shall be—

- (a) served, either personally or by post, on that person; or
- (b) served personally on a person who, at the time of the 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 sub-section (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 Comptroller, 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 Comptroller may, by writing, renew a warehouse licence on the application, in writing, of the holder of the licence.

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

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

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

Fees for warehouse licences

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

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

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

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

Suspension of warehouse licences

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

- (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 Comptroller 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 Comptroller 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 Comptroller at an address specified in the notice a written statement showing cause why the licence should not be cancelled; and
- (b) may, if it appears to the Comptroller to be necessary for the protection of the revenue 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.

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

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

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

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

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

Penalty: \$1,000.

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

- (a) permit goods to be placed in the warehouse;
- (b) permit a process to be carried out in the warehouse;
- (c) permit the removal of goods from the warehouse, including the removal of goods to another warehouse;
- (d) by notice in 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 Minister determines, having regard to the cost of the services.

(8) If an amount that the holder of a licence is required to pay in accordance with a notice under paragraph (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 Comptroller may cancel a warehouse licence if—

- (a) he is satisfied in relation to the licence as to any of the matters mentioned in paragraphs (a) to (h) (inclusive) of sub-section 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 Comptroller shall cancel a warehouse licence under sub-section (1) by notice in writing—

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

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

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

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

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

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

(5) Where the Comptroller who has cancelled a warehouse licence under this section is satisfied that all the goods in the place that was the warehouse are the property of the person who held the licence, the notice referred to in sub-section (4) need not be published as mentioned in that sub-section but shall be—

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

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

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

Penalty: \$100.

Service of notices

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

90.² 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: \$250.

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, &c., 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 sub-section (1) does not affect any liability of the owner of the goods to pay the holder of a warehouse licence any rent or charges payable in respect of the goods.

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.

96A.² * * * * *

Goods for public exhibition

97. (1) Subject to sub-section (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 sub-section (1) shall specify the period during which the owner of the relevant goods may keep the goods outside the warehouse.

(3) Permission under sub-section (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 manufactured in warehouse

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

Entry of warehoused goods

99.² Warehoused goods may be entered—

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

Constructive warehousing

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

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

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

Penalty: \$500.

Delivery of warehousing authority

101.² 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: \$500.

Holder of licence to inform Collector of certain matters

102.² (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: \$500.

PART VA—(sections 103-111, 111A-111E)^{2 and 4}

PART VI—THE EXPORTATION OF GOODS

Prohibited exports

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

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

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

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

- (a) may provide that the exportation of the goods is prohibited unless a licence, permission, consent or approval to export the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations; and
- (b) may make provision for and in relation to—
 - (i) the assignment of licences or permissions so granted or of licences or permissions included in a prescribed class of licences or permissions so granted;
 - (ii) the granting of a licence or permission to export goods subject to compliance with conditions or requirements, either before or

after the exportation of the goods, by the holder of the licence or permission at the time the goods are exported;

- (iii) the surrender of a licence or permission to export goods and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to export goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to export goods; and
- (iv) the revocation of a licence or permission that is granted subject to a condition or requirement to be complied with by a person for failure by the person to comply with the condition or requirement, whether or not the person is charged with an offence against sub-section (2B) in respect of the failure.

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

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

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

Size of exporting vessel

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

Penalty: \$500.

Entry of goods for export

114. (1) Subject to this Act, goods that are intended for export are required to be entered for export, and—

- (a) where the goods consist of a ship or an aircraft that is to be exported otherwise than in a ship or an aircraft, the owner of the goods shall not allow the goods to leave the place of exportation; or
- (b) in any other case, the owner of the goods shall not allow the goods to be taken on board the ship or aircraft in which they are to be exported,

unless and until authority under section 39 to export the goods has been given.

Penalty: \$1,000.

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

- (a) goods that are excisable goods within the meaning of the *Excise Act 1901*;
- (b) goods which, under the regulations, are exempt from this section; or
- (c) goods to which section 114A applies.

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

Returns relating to goods exported

114A.² (1) The Minister may, by notice published in the *Gazette*, declare that goods, or goods included in a specified class of goods, owned by a specified person that are intended for export from any place or from a specified place to any place or to a specified place are goods to which this section applies.

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

(3) A person, being the owner of goods to which this section applies, shall, within 7 days after the expiration of a period approved by the Collector in writing in respect of the person for the purposes of this section, furnish to a Collector a return, in accordance with a form approved by a Collector, signed by, or on behalf of, the person and containing such information as is prescribed in respect of goods to which this section applies that were exported by the person during the period.

Penalty: \$200.

Authority for exportation of goods to be given

115.² The owner of a ship or aircraft shall not permit goods required to be entered for export to be taken on board the ship or aircraft for the purpose of exportation unless the goods have been so entered and authority given under section 39 to deal with the goods in accordance with the entry has been produced to him.

Short-shipped goods

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

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

Penalty: \$100.

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.

Certificate of clearance

118.² 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: \$500.

Requisites for obtaining clearance

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

- (a) the master owner or pilot shall deliver to the Collector an Outward Manifest in accordance with the prescribed form;
- (b) the Master and owner of the ship or the pilot and owner of the aircraft shall severally answer questions relating to the ship or aircraft and her cargo, crew, passengers, stores and voyage; and
- (c) the master and owner or the pilot and owner shall severally produce documents relating to the ship or aircraft and her cargo.

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

(3) Where, in pursuance of the last preceding sub-section, the Minister has decided not to grant a Certificate of Clearance, the owner of the ship or aircraft shall be entitled, in a Court of competent jurisdiction, to recover damages against the Commonwealth in respect of the non-granting, or delay in granting, of the Certificate, if the Court is satisfied that the non-granting or delay was without reasonable and probable cause.

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

Shipment of goods

120.² 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;
- (b) passengers' baggage;

(c) stores in respect of which the approval of a Collector has been granted under section 129;

(d) ballast as approved by the Collector.

Penalty: \$250.

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.

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

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

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

Penalty: \$250.

Goods exported to be landed at proper destination

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

Penalty: \$250.

Certificate of landing

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

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reasonable time to produce such certificate of the landing of any such goods previously exported by him or to account for such goods to the satisfaction of the Collector.

PART VII—SHIPS' STORES AND AIRCRAFT'S STORES**Use of ships' and aircraft's stores**

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

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

Penalty: \$2,000.

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

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

- (a) he is guilty of an offence against this Act punishable, upon conviction, by a penalty not exceeding \$1,000; and
- (b) if he failed to comply with a requirement before the goods were placed on board the ship or aircraft—the removal of the goods for the purpose

of placing the goods on board the ship or aircraft shall, for the purposes of paragraph 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 sub-section (1) shall, notwithstanding that the goods are taken on board by authority of an entry under this Act, be deemed, for the purposes, to be prohibited exports.

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

(3) A person who fails to comply with a direction under sub-section (2) is guilty of an offence punishable upon conviction by a penalty not exceeding \$2,000.

Interpretation

130C. In this Part—

“aircraft” does not include—

- (a) an aircraft that is not currently engaged in making international flights; or

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- (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;

“place outside Australia” does not include—

- (a) a ship, or an area of waters, outside Australia;
- (b) an installation outside Australia; or
- (c) a reef, or an uninhabited island, 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.⁵ (1) Fish and other goods the produce of the sea which are caught or gathered by a ship which—

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

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

(2) Sub-section (1) does not exclude fish or other goods the produce of the sea specified in the Convention on International Trade in endangered species of wild fauna and flora from the control of Customs where the importation into

Australia of the fish or other goods, as the case may be, is prohibited, either absolutely or otherwise, by the regulations. The regulations shall specify those species of wild fauna and flora which are applicable to the provisions of the Convention on International Trade in endangered species of wild fauna and flora.

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) Subject to sub-section 38 (5), for the purposes of this section, where an entry for home consumption in respect of goods is withdrawn under sub-sections 38 (1) and (2) and the goods are subsequently entered for warehousing, the entry for home consumption shall 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 Minister is of the opinion that, for the reason that persons are anticipating, or may anticipate, an increase in the rate of duty applicable to goods of a particular kind, the quantity of goods of that kind that may be entered for home consumption during a period is likely to be greater than it would otherwise be, the Minister may, by notice published in the *Gazette*, declare that that period is, for the purposes of this section, a declared period with respect to goods of that kind.

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

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

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sub-section (4) of this section and sub-section 71B (6), 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 Minister may, before authority to deal with the goods is given under section 39 and whether or not the declared period has expired, make, under sub-section (3), a quota order that is applicable to that person for that declared period in respect of goods of that kind, and a quota order so made shall, subject to sub-section 71B (6) and unless the contrary intention appears in the order, be deemed to have come into force immediately before the time of entry of the goods.

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

(6) If—

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

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

(7) If—

- (a) at any time during a declared period, a person has entered any goods for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that states that the person’s quota in respect of goods of that kind is nil; and

- (b) the amount of import duty paid or payable on those goods at the rate of duty in force at the time of entry of the goods is less than the amount of duty applicable to those goods in accordance with the rate of duty in force on the day immediately following the last day of the declared period,

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

(8) 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 39, in addition to requiring import duty to be paid on the goods at the rate in force at that time of entry of the goods, to require and take, for the protection of the revenue of the Customs in relation to any additional amount of duty that may become payable on the goods, or on a part of the goods, by virtue of the operation of sub-section (6) or (7), security by way of cash deposit of an amount equal to the amount of duty payable on the goods, or on that part of the goods, at the rate in force at the time of entry of the goods.

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

Revocation and variation of quota orders

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

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

whichever last occurs.

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

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

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

(5) Where—

(a) a quota order applicable to a person states that the person's quota in respect of goods of the kind to which the order relates is a quantity specified in the order; and

(b) the Minister varies the order in such a way that the order specifies a lesser quantity or states that the person's quota is nil,

the variation has effect on and from the day on which it is made.

Service of quota orders, &c.

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

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.

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

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

(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.

Duty how fixed

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

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 Comptroller.

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 manifest but not produced or landed

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

(2) For the purposes of section 132, goods to which sub-section (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.

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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.

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

151. (1) For the purposes of this Act and the *Customs Tariff Act 1982*, goods shall be treated as the produce of a country if they are unmanufactured raw products of the country.

(2) For the purposes of this Act and the *Customs Tariff Act 1982*, goods shall be treated as the manufacture of a country, not being—

- (a) a country that is a Forum Island Country but not a Declared Preference Country; or
- (b) a Developing Country,

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

- (c) unmanufactured raw products;
- (d) materials wholly manufactured in the country or in Australia, or in the country and in Australia; and
- (e) imported materials that the Minister has, in relation to the country, determined, by notice published in the *Gazette*, to be manufactured raw materials.

(3) For the purposes of this Act and the *Customs Tariff Act 1982*, goods shall be treated as the manufacture of New Zealand if—

- (a) the goods were partly manufactured in New Zealand;
- (b) the process last performed in the manufacture of the goods was performed in New Zealand; and
- (c) not less than one-half, or, in the case of goods included in a class of goods in respect of which the Minister has determined, by notice published in the *Gazette*, that another portion is appropriate, that portion, of the factory or works cost of the goods is represented by the value of labour or materials, or of labour and materials, of New Zealand or of New Zealand and Australia.

(4) For the purposes of this Act and the *Customs Tariff Act 1982*, goods shall be treated as the manufacture of Papua New Guinea if—

- (a) the goods were partly manufactured in Papua New Guinea;
- (b) the process last performed in the manufacture of the goods was performed in Papua New Guinea; and
- (c) not less than one-half, or, in the case of goods included in a class of goods in respect of which the Minister has determined, by notice published in the *Gazette*, that a lesser portion is appropriate, that portion, of the factory or works cost of the goods is represented by the value of labour or materials, or of labour and materials, of Papua New Guinea or of Papua New Guinea and Australia.

(5) For the purposes of this Act and the *Customs Tariff Act 1982*, goods shall be treated as the manufacture of a country, being a Forum Island Country, if—

- (a) the process last performed in the manufacture of the goods was performed in the country; and
- (b) not less than one-half, or, in the case of goods included in a class of goods in respect of which the Minister has determined, by notice published in the *Gazette*, that, in relation to the country, a lesser portion is appropriate, that portion, of the factory or works cost of the goods is represented by the value of labour or materials, or of labour and materials, of the country or of the country and one or more of the following countries, that is to say, Australia, Papua New Guinea and countries that, at the time when the goods are entered for home consumption, are Forum Island Countries, other than Forum Island Countries in relation to which special rates of duty under the *Customs Tariff Act 1982* do not apply in respect of the class of goods in which the goods are included.

(6) For the purposes of this Act and the *Customs Tariff Act 1982*, goods shall be treated as the manufacture of a country, being a Forum Island Country, a Declared Preference Country or a Developing Country, if—

- (a) the process last performed in the manufacture of the goods was performed in the country; and
- (b) not less than one-half of the factory or works cost of the goods is represented by the value of labour or materials, or of labour and materials, of the country or of the country and one or more of the following countries, that is to say, Australia, Papua New Guinea and countries that, at the time when the goods are entered for home consumption, are Forum Island Countries, Declared Preference Countries or Developing Countries, other than countries in relation to which special rates of duty under the *Customs Tariff Act 1982* do not apply in respect of the class of goods in which the goods are included.

(7) For the purposes of this Act and the *Customs Tariff Act 1982*, goods shall be treated as the manufacture of a country, being Canada, a Declared Preference Country or another country, other than New Zealand, Papua New Guinea, a country that is a Forum Island Country but not a Declared Preference Country, and a Developing Country, if—

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

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(8) For the purposes of sub-section (5), a special rate of duty under the *Customs Tariff Act 1982* does not apply in relation to a Forum Island Country in respect of a class of goods if no rate of duty that applies in relation to that Forum Island Country, or no rate of duty other than a rate of duty in relation to which "DPC" is specified, is set out in column 4 in the tariff classification in Schedule 3 to that Act that applies to goods constituting that class.

(9) For the purposes of sub-section (6), a special rate of duty under the *Customs Tariff Act 1982* does not apply in relation to a country in respect of a class of goods if no rate of duty that applies in relation to that country is set out in column 4 in the tariff classification in Schedule 3 to that Act that applies to goods constituting that class.

(10) For the purposes of this section, the Minister may, by notice published in the *Gazette*—

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

(11) The Minister may, for the purposes of sub-section (5), determine that, in the case of goods included in a specified class of goods, a specified portion is appropriate in relation to a specified Forum Island Country or in relation to all Forum Island Countries.

(12) For the purposes of sub-section (7), the Minister may, by notice published in the *Gazette*, determine that goods specified in the notice or goods included in a class of goods so specified, shall be deemed to be goods of a class or kind not commercially manufactured in Australia.

(13) The Minister may, by notice published in the *Gazette*, determine that the reference in sub-section (7) to one-quarter shall, in relation to goods specified in the notice, or goods included in a class of goods so specified, be read as a reference to one-half.

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

(15) In this section, "Forum Island Country", "Declared Preference Country" and "Developing Country" have the same meanings as they have in the *Customs Tariff Act 1982* and, for the purposes of this section, a place that, for the purposes of that Act, is to be treated as a Declared Preference Country or a Developing Country shall be taken to be a country that is a Declared Preference Country or a Developing Country, as the case may be.

(16) In this section "unmanufactured raw products" means natural or primary products that have not been subjected to an industrial process, other

than an ordinary process of primary production, and includes, without limiting the generality of the foregoing—

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

Direct shipment to Australia for certain preferences

151A. (1) For the purposes of this Act and the *Customs Tariff Act 1982*, goods shall not be treated as the produce or manufacture of New Zealand, Papua New Guinea or Canada unless they have been shipped from that country to Australia and, except where the Collector is satisfied that the intended destination of the goods when originally shipped from that country was Australia, have not been transhipped.

(2) Sub-section (1) does not apply—

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

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

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

Recovery of duties

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

Division 2—Valuation of Imported Goods**Interpretation**

154. (1) In this Division, unless the contrary intention appears—

“acquisition”, in relation to goods, includes acquisition by way of purchase or exchange or by way of taking on lease, on hire or on hire-purchase or under licence;

“Australian freight”, in relation to goods, means any costs, charges and expenses of, or associated with, the transportation of the goods within Australia;

“Australian insurance”, in relation to goods, means any costs, charges and expenses of, or associated with, the insurance of the goods in respect of the transportation of the goods within Australia;

“computed unit price”, in relation to goods means the computed value of the goods divided by the number of the units of the goods;

“computed value”, in relation to goods, means the computed value of the goods as determined by a Collector under section 161A;

“container” means an article of transport equipment that—

- (a) is fully or partially enclosed so as to constitute a compartment intended for containing goods;
- (b) is of a permanent character and strong enough to be suitable for repeated use;
- (c) is specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;
- (d) is designed for ready handling, particularly when being transported from one mode of transport to another;
- (e) is designed to be easy to fill and to empty; and
- (f) has an internal volume of one cubic metre or more;

“deductive unit price”, in relation to goods, means the deductive unit price of the goods as determined by a Collector under section 161;

“deductive value”, in relation to goods, means the value of the goods calculated by reference to the deductive unit price of the goods;

“inland freight”, in relation to goods in a country other than Australia, means any costs, charges or expenses of, or associated with, the transportation of the goods within that country before export from the place of export;

“inland insurance”, in relation to goods in a country other than Australia, means any costs, charges and expenses of, or associated with, the

insurance of the goods in respect of the transportation of the goods within that country before export from the place of export;

“overseas freight”, in relation to goods, means any costs, charges and expenses of, or associated with, the transportation of the goods from the place of export to Australia;

“overseas insurance”, in relation to goods, means any costs, charges and expenses of, or associated with, the insurance of the goods in respect of the transportation of the goods from the place of export to Australia;

“place of export”, in relation to goods exported from a country, means—

- (a) where, while in that country, the goods were packed in a container—the place at which the goods were so packed in the container;
- (b) where the goods (not being goods referred to in paragraph (a)) were exported by sea or by air—the place, or the first place, at which the goods were placed on board a ship or aircraft for export from the country; or
- (c) in any other case—the place at which the goods crossed the border of the country;

“price”, in relation to goods the subject of a contract of sale, means the aggregate of all payments made, or to be made, directly or indirectly, in connection with the goods by the purchaser to or for the benefit of the vendor (including any payment by the purchaser to a person other than the vendor to satisfy an obligation of the vendor) in accordance with the contract, whether the payment is made in money or by letter of credit, negotiable instrument or otherwise, and includes the value, as determined by a Collector, of any goods or services that are to be supplied by, or on behalf of, the purchaser as part of the consideration passing from the purchaser under the contract of sale, but does not include any duties of customs, or any other taxes, payable under a law in force in Australia by reason of the importation or sale of the goods;

“produce” includes grow, manufacture, mine, process or treat;

“purchaser”, in relation to goods, means the purchaser in relation to the relevant transaction;

“relevant transaction”, in relation to goods, means—

- (a) a contract of sale of the goods (not being a contract of sale that, in the opinion of a Collector, is a contract of sale on the domestic market of a country other than Australia) entered into before the goods became subject to Customs control; or
- (b) if there were 2 or more such contracts—the later or latest of those contracts;

“transaction unit price”, in relation to goods, means the transaction value of the goods divided by the number of the units of the goods;

“transaction value”, in relation to goods, means the transaction value of the goods as determined by a Collector under section 159;

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“vendor”, in relation to goods, means the vendor in relation to the relevant transaction.

(2) In ascertaining the price of goods for the purposes of this Division—

(a) a Collector shall not have regard to—

- (i) any rebate of, or other decrease in, that price the right to which has not accrued when the ascertainment is made; or
- (ii) any costs, charges or expenses in respect of activities undertaken by the purchaser on his own account in connection with the goods (including any activities of the purchaser relating to advertising or promoting the sale of the goods or relating to warranties or guarantees in respect of the goods); and

(b) a Collector shall deduct from the amount that, but for this paragraph, would be the amount of that price such amounts as the Collector considers necessary, in accordance with generally accepted accounting principles, to take account of the following matters:

- (i) any payment of interest, or any other cost or charge, paid or payable under a financing arrangement entered into by the purchaser with respect to the purchase of the goods;
- (ii) any overseas freight or overseas insurance in respect of the goods;
- (iii) any of the following costs, charges or expenses in respect of the goods that are, in the opinion of the Collector, capable of being quantified by reference to the contract of sale of the goods:
 - (A) any costs, charges or expenses that are incurred for the construction, erection, assembly or maintenance of, or any technical assistance in respect of, the goods, being costs, charges or expenses incurred after the importation of the goods;
 - (B) any Australian freight or Australian insurance in respect of the goods.

(3) For the purposes of this Division, where the amount of inland freight in respect of goods the produce or manufacture of Canada that were exported from Canada would, but for this sub-section, be greater than the amount (in this sub-section referred to as “the maximum amount”) that it would have been if the goods had been forwarded from the place of origin of the goods to the nearest point of exist in Canada, then, by force of this sub-section, the inland freight in respect of those goods shall be deemed to be an amount equal to the maximum amount.

(4) For the purposes of this Division, two 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.

(5) A reference in this Division to generally accepted accounting principles shall be read as a reference to generally accepted accounting principles in the country that is the relevant country with respect to the matter under consideration.

Identical goods and similar goods

155. (1) For the purposes of the operation of this Division in relation to goods to be valued, a Collector may, and shall if so requested by the owner of the goods to be valued, treat other goods as identical goods in relation to the goods to be valued if he is satisfied that the other goods—

- (a) are the same in all material respects, including physical characteristics, quality and reputation, as the goods to be valued;
- (b) were produced in the same country as the goods to be valued; and
- (c) were produced by or on behalf of the producer of the goods to be valued.

(2) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under sub-section (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 goods to be valued.

(3) For the purposes of the operation of this Division in relation to goods to be valued, a Collector may, and shall if so requested by the owner of the goods

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to be valued, treat other goods as similar goods in relation to the goods to be valued if he is satisfied that the other goods—

- (a) closely resemble the goods to be valued in respect of component materials and parts and in respect of physical characteristics;
- (b) are functionally and commercially interchangeable with the goods to be valued 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 goods to be valued; and
- (d) were produced by or on behalf of the producer of the goods to be valued.

(4) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under sub-section (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 goods to be valued.

(5) A reference in sub-section (1) or (3) to other goods shall be read as not including a reference to goods in relation to which engineering work, development work, art work or design work that was, or plans or sketches that were, undertaken in Australia was, or were, supplied, directly or indirectly, by the purchaser, free of charge or at a reduced cost, for use in connection with the production of those goods.

Value of imported goods

156. Subject to any contrary intention that may appear from the provisions of the *Customs Tariff Act 1982* or of this Act with respect to a particular case, the value of any imported goods for the purposes of the *Customs Tariff Act 1982* shall be the customs value of the goods as determined in accordance with this Division.

Customs value of goods

157. (1) Subject to sub-section (2), the customs value of goods to be valued is the transaction value of the goods.

(2) Subject to sub-section (3), where the Comptroller considers that the customs value of goods to be valued cannot be determined in accordance with sub-section (1), the customs value of the goods is the value of the goods calculated by reference to—

- (a) the transaction unit price of identical goods; or
- (b) if, by reason that two or more lots of goods have been treated as identical goods for the purposes of the operation of this sub-section, there are two or more such unit prices—that one of those unit prices that is the lower or lowest.

(3) Subject to sub-section (6), where the Comptroller considers that the customs value of goods to be valued cannot be determined in accordance with

sub-section (1) or (2), the customs value of the goods is the value of the goods calculated by reference to—

- (a) the transaction unit price of similar goods; or
- (b) if, by reason that two or more lots of goods have been treated as similar goods for the purposes of the operation of this sub-section, there are two or more such unit prices—that one of those unit prices that is the lower or lowest.

(4) Subject to sub-section (5), a Collector shall not treat goods as identical goods or similar goods for the purposes of sub-section (2) or (3) unless he is satisfied that—

- (a) the requirements of section 155 are satisfied with respect to the goods;
- (b) the goods were exported to Australia at or about the same time as the goods to be valued; and
- (c) the goods were sold in a relevant transaction at the same trade level as the goods to be valued and in the same, or substantially the same, quantities as the goods to be valued.

(5) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated as identical goods or similar goods for the purposes of sub-section (2) or (3), the Collector shall disregard the requirement in paragraph (4) (c) for the purpose of treating goods as identical goods or similar goods, as the case may be, for the purposes of sub-section (2) or (3), as the case may be.

(6) Subject to sub-sections (7) and (8), where the Comptroller considers that the customs value of goods to be valued cannot be determined in accordance with sub-section (1), (2) or (3), the customs value of the goods is the deductive value of the goods.

(7) Subject to sub-section (8), where—

- (a) the Comptroller considers that the customs value of goods to be valued cannot be determined in accordance with sub-section (1), (2), (3) or (6); and

(b) the exporter was the producer of the goods to be valued,
the customs value of the goods is the computed value of the goods.

(8) Subject to sub-section (9), where the Comptroller considers that the customs value of goods to be valued cannot be determined in accordance with sub-section (1), (2), (3), (6) or (7), the customs value of the goods is such value as the Comptroller determines.

(9) In determining the customs value of goods under sub-section (8), the Comptroller shall not have 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 of export;

- (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 (other than goods that, having been so exported, are imported into Australia);
- (f) any system that provides for minimum customs values;
- (g) arbitrary or fictitious values.

(10) Where the exporter was the producer of the goods to be valued, the owner of the goods to be valued may, at any time before duty is paid, request a Collector to apply sub-sections (6) and (7) in determining the customs value of the goods as if—

- (a) the reference in sub-section (6) to the deductive value of the goods were a reference to the computed value of the goods; and
- (b) the reference in sub-section (7) to the computed value of the goods were a reference to the deductive value of the goods,

and the Collector shall give effect to that request accordingly.

(11) Where a request under sub-section (10) is made after the customs value of the goods concerned has been determined, any new customs value determined by a Collector in accordance with the request shall be substituted for that first-mentioned customs value.

Circumstances in which customs value of goods cannot be determined

158. (1) The determination of the customs value of goods by a Collector in accordance with a particular provision of section 157 is dependent upon there being available to the Collector sufficient and reliable information for the purpose, and, if the Comptroller is not satisfied that such information is available to a Collector, the Comptroller shall determine that the customs value of the goods cannot be determined in accordance with that provision.

(2) Without affecting the generality of sub-section (1)—

- (a) where the Comptroller, in accordance with sub-section (3), (4) or (6), determines that the transaction value of the goods to be valued cannot be determined; the Comptroller shall determine that the customs value of the goods cannot be determined in accordance with sub-section 157 (1);
- (b) where the Comptroller, in accordance with sub-section (3), (4) or (6), determines, with respect to identical goods in relation to the goods to be valued, or, if there are two or more lots of such goods, with respect to the goods in each of those lots, that the transaction value of the goods cannot be determined, the Comptroller shall determine that the customs value of the goods to be valued cannot be determined in accordance with sub-section 157 (2); and
- (c) where the Comptroller, in accordance with sub-section (3), (4) or (6), determines, with respect to similar goods in relation to the goods to be valued, or, if there are two or more lots of such goods, with respect to

the goods in each of those lots, that the transaction value of the goods cannot be determined; the Comptroller shall determine that the customs value of the goods to be valued cannot be determined in accordance with sub-section 157 (3).

(3) If the Comptroller, after reasonable inquiry, is not aware of any relevant transaction in relation to goods, he shall determine that the transaction value of the goods cannot be determined.

(4) Where the Comptroller is satisfied that the disposition or use of goods by the purchaser is subject to restrictions, other than restrictions that—

- (a) are imposed or required by, or by any public officer or authority acting in accordance with, any law in force in Australia;
- (b) limit the geographical area in which the goods may be sold; or
- (c) do not substantially affect the commercial value of the goods,

the Comptroller shall determine that the transaction value of the goods cannot be determined.

(5) Where the Comptroller—

- (a) is satisfied that the purchaser and the vendor of goods were, at the time of the relevant transaction, related persons; and
- (b) considers that that relationship may have influenced the price of the goods,

the Comptroller shall, by notice in writing served, personally or by post, on the owner of the goods—

(c) advise the owner of—

- (i) the view that the Comptroller 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 Comptroller may be required to determine under sub-section (6) that the transaction value of the goods cannot be determined; and

(d) invite the owner to put before the Comptroller, within a period specified in the notice (not being a period of less than 28 days), such further information as the owner considers might serve to satisfy the Comptroller as to any of the matters set out in sub-section (6).

(6) On the expiration of the period specified in a notice under sub-section (5), the Comptroller shall, unless the owner of the goods has satisfied him that—

- (a) the relationship between the purchaser and the vendor of the goods did not influence the price of the goods; or

- (b) the transaction unit price of the goods closely approximates, having regard to all relevant factors—
- (i) the transaction unit price of identical goods or similar goods that were exported to Australia at or about the same time as the goods to be valued;
 - (ii) the deductive unit price of identical goods or similar goods that were sold in Australia at or about the same time as the importation of the goods to be valued; or
 - (iii) the computed unit price of identical goods or similar goods that were imported into Australia at or about the same time as the goods to be valued;

determine that the transaction value of the goods cannot be determined.

(7) In sub-section (6), "transaction unit price", in relation to the goods to be valued, means 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 relevant transaction divided by the number of the units of the goods.

Transaction value of goods

159. (1) A Collector shall determine the transaction value of goods in accordance with this section.

(2) The transaction value of goods is an amount equal to the amount of the price, as determined by the Collector, in accordance with the relevant transaction, being that price as adjusted to the extent required by sub-section (3).

(3) There shall be added to the price referred to in sub-section (2) such amounts as the Collector considers necessary, in accordance with generally accepted accounting principles, to take account of the following matters:

- (a) commission or brokerage (not being a fee paid or payable by the purchaser to his agent for the service of representing the purchaser in the purchase of the goods to be valued) paid, or payable, by the purchaser in respect of the goods to be valued;
- (b) packing costs or charges, whether for materials or labour or for materials and labour, (including costs of packages and coverings that fall within item 12 in Part I of Schedule 4 to the *Customs Tariff Act 1982*) incurred by the purchaser in respect of the goods to be valued;
- (c) any of the following goods or services that have been supplied, directly or indirectly, by the purchaser free of charge or at a reduced cost in connection with the production of the goods to be valued:
 - (i) materials, components or other goods that form part of the goods to be valued;
 - (ii) tools, dies, moulds or other goods used in the production of the goods to be valued;

- (iii) any materials consumed in the production of the goods to be valued;
- (iv) engineering work, development work, art work or design work that was, or plans or sketches that were, required for the production of the goods to be valued, to the extent that the work was, or the plans or sketches were, undertaken outside Australia;
- (d) any goods or services that have been supplied, directly or indirectly, by the purchaser in connection with the production of goods or services specified in a sub-paragraph of paragraph (c) that have been supplied, directly or indirectly, by the purchaser (whether or not free of charge or at a reduced cost) in connection with the production of the goods to be valued;
- (e) royalties or licence fees (including any payments for patents, trade marks or copyrights, whether granted under a law in force in Australia or in a country other than Australia, but not including any payments for the right to reproduce the goods to be valued) paid, or payable, directly or indirectly, in accordance with the terms of the relevant transaction or with any arrangement entered into in connection with the relevant transaction, by the purchaser in respect of the goods to be valued;
- (f) the accrual, directly or indirectly, to the vendor of the whole, or any part, of the proceeds of any resale, disposal or use of the goods to be valued by the purchaser; or
- (g) any inland freight or inland insurance in respect of the goods to be valued paid, or payable, directly or indirectly, in accordance with the terms of the relevant transaction or with any arrangement entered into in connection with the relevant transaction, by the purchaser to or for the benefit of the vendor.

(4) In determining amounts under sub-section (3) in respect of goods specified in sub-paragraph (3) (c) (i) or (iii), the Collector shall take as the value of those goods an amount equal to the aggregate of the following amounts:

- (a) an amount equal to—
 - (i) where the goods were acquired by the purchaser from a person who was not related to him at the time of the acquisition—the cost of that acquisition;
 - (ii) where the goods were acquired by the purchaser from a person who was related to him at the time of the acquisition and who did not produce the goods—the cost of the acquisition of the goods by the person related to the purchaser; or
 - (iii) where the goods were produced by the purchaser or by a person who was related to him at the time of the production of the goods—the cost of that production;

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- (b) the amount of the cost of transporting the goods after their acquisition or production by the purchaser to the place of production of the goods to be valued;
- (c) the amount of the value added to the goods by any repairs or modifications made to the goods after the goods were so acquired or produced by the purchaser.

(5) In determining an amount under sub-section (3) in respect of goods specified in sub-paragraph (3) (c) (ii), the Collector shall take as the value of those goods such part of the aggregate of the following amounts as he considers should be apportioned, in accordance with generally accepted accounting principles, to the production of the goods to be valued;

- (a) an amount equal to—
 - (i) where the goods were acquired by the purchaser from a person who was not related to him at the time of the acquisition—the cost of that acquisition;
 - (ii) where the goods were acquired by the purchaser from a person who was related to him at the time of the acquisition and who did not produce the goods—the cost of the acquisition of the goods by the person related to the purchaser; or
 - (iii) where the goods were produced by the purchaser or by a person who was related to him at the time of the production of the goods—the cost of that production;
- (b) the amount of the cost of transporting the goods after their acquisition or production by the purchaser to the place of production of the goods to be valued;
- (c) the amount of the value added to the goods by any repairs or modifications made to the goods after the goods were so acquired or produced by the purchaser.

(6) In determining an amount under sub-section (3) in respect of goods specified in sub-paragraph (3) (c) (iv), the Collector shall take as the value of those goods such part of the aggregate of the following amounts as he considers should be apportioned, in accordance with generally accepted accounting principles, to the production of the goods to be valued:

- (a) an amount equal to—
 - (i) where the goods (other than goods to which sub-paragraph (iv) applies) were acquired by the purchaser from a person who was not related to him at the time of the acquisition—the cost of that acquisition;
 - (ii) where the goods (other than goods to which sub-paragraph (iv) applies) were acquired by the purchaser from a person who was related to him at the time of the acquisition and who did not produce the goods—the cost of the acquisition of the goods by the person related to the purchaser;

- (iii) where the goods (other than goods to which sub-paragraph (iv) applies) were produced by the purchaser or by a person who was related to him at the time of the production of the goods—the cost of that production; or
- (iv) where the goods were available generally to the public in Australia or elsewhere at the time of the acquisition by the purchaser—the cost to the public of acquiring those goods;
- (b) the amount of the value added to the goods by any repairs or modifications made to the goods after the goods were so acquired or produced by the purchaser (other than the amount of any such value added to the goods in Australia).

(7) In determining an amount under sub-section (3) in respect of services specified in sub-paragraph (3) (c) (iv), the Collector shall take as the value of those services such part of the aggregate of the following amounts as he considers should be apportioned, in accordance with generally accepted accounting principles, to the production of the goods to be valued:

- (a) an amount equal to—
 - (i) where the 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 services so supplied;
- (b) the amount of the value added to the services by the supply of any further services in connection with the services originally supplied (other than the amount of any such value added to the services in Australia).

(8) Sub-sections (4), (5), (6) and (7) do not apply in relation to the determination of an amount under sub-section (3) in respect of goods specified in paragraph (3) (d).

Adjustment of transaction value of identical goods or similar goods

160. In determining the customs value of goods in accordance with sub-section 157 (2) or (3), a Collector shall make such adjustment to the transaction value of identical goods or of similar goods, as the case may be, as he considers necessary to take account of—

- (a) any commercially significant differences between the inland freight and inland insurance referred to in paragraph 159 (3) (g) with respect to the goods to be valued and the corresponding inland freight and inland insurance with respect to the identical goods or the similar goods, as the case may be, being differences attributable to differences in the distances over which the goods have been transported or differences in the modes of transport of the goods;
- (b) any difference between the trade level of the relevant transaction in relation to the goods to be valued and the trade level of the relevant

transaction in relation to the identical goods or the similar goods, as the case may be; and

- (c) any difference between the quantities in which the goods to be valued were sold in the relevant transaction and the quantities in which the identical goods or the similar goods, as the case may be, were sold in the relevant transaction.

Deductive unit price of goods

161. (1) A Collector shall determine the deductive unit price of goods in accordance with this section.

(2) Where, at or about the same time as the time of importation of the goods to be valued, the goods to be valued or identical goods or similar goods were, to the knowledge of the Collector, sold in Australia in the condition in which they were imported, the deductive unit price of the goods to be valued is—

- (a) where there was only one such sale—the unit price of the goods for the purposes of that sale;
- (b) where there were 2 or more such sales and one of them related to a greater number of units of goods than the other or than any of the others—the unit price of the goods for the purposes of that sale;
- (c) where—
 - (i) there were 2 or more such sales that related to an equal number of units of goods and that number was greater than the number of units of goods to which the other sale, or any of the other sales, related; and
 - (ii) the date of one of the sales to which sub-paragraph (i) relates was nearer to the date of importation of the goods to be valued than the date of the other sale, or of any of the other sales, to which sub-paragraph (i) relates,

the unit price of the goods for the purposes of the sale to which sub-paragraph (ii) relates;

- (d) where—
 - (i) there were 2 or more such sales that related to an equal number of units of goods and that number was greater than the number of units of goods to which the other sale, or any of the other sales, related; and
 - (ii) two or more of the sales to which sub-paragraph (i) relates were on a common date or on 2 dates one of which was before and the other of which was after, and each of which was equidistant from, the date of importation of the goods to be valued and that common date or each of those 2 dates, as the case may be, was nearer to the date of importation of the goods

to be valued than the date of the other sale, or any of the other sales, to which sub-paragraph (i) relates,

the unit price that is the lower, or lowest, of the unit prices of the goods for the purposes of the sales on that common date or the sales on those 2 dates, as the case may be.

(3) Where the Collector, after reasonable inquiry, is not aware of any sales to which sub-section (2) relates but, during the period of 90 days that commenced on the date of importation of the goods to be valued, the goods to be valued or identical goods or similar goods were, to the knowledge of the Collector, sold in Australia in the condition in which they were imported, the deductive unit price of the goods to be valued is—

- (a) where there was only one such sale—the unit price of the goods for the purposes of that sale;
- (b) where there were 2 or more such sales and one of them was on an earlier date than the other or than any of the others—the unit price of the goods for the purposes of that sale;
- (c) where—
 - (i) there were 2 or more such sales on a common date and that date was earlier than the date of the other sale or of any of the sales; and
 - (ii) one of the sales on that common date related to a greater number of units of goods than the other sale, or than any of the other sales, on that common date,

the unit price of the goods for the purposes of the sale to which sub-paragraph (ii) relates;

- (d) where—
 - (i) there were 2 or more such sales on a common date and that date was earlier than the date of the other sale or of any of the other sales; and
 - (ii) two or more of those sales on that common date related to the same number of units of goods and that number was greater than the number of the units of goods to which the other sale, or any of the other sales, on that common date related,

the unit price that is the lower, or lowest, of the unit prices of the goods for the purposes of the sales to which sub-paragraph (ii) relates.

(4) Subject to sub-section (5), where the Collector, after reasonable inquiry, is not aware of any sales to which sub-section (2) or (3) relates but, during the period of 90 days that commenced on the date of importation of the goods to be valued, the goods to be valued, after being assembled, packaged or further processed in Australia, were, to the knowledge of the Collector, sold (whether all or some of the goods were so sold on one occasion only or some of

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the goods were so sold on different occasions) in Australia, the deductive unit price of the goods to be valued is—

- (a) where there was only one such sale—the unit price for the purposes of that sale;
- (b) where there were 2 or more such sales and one of them related to a greater number of units of goods than the other or than any of the others—the unit price of the goods for the purposes of that sale;
- (c) where—
 - (i) there were 2 or more such sales that related to an equal number of units of goods and that number was greater than the number of units of goods to which the other sale, or any of the other sales, related; and
 - (ii) the date of one of the sales to which sub-paragraph (i) relates is earlier than the date of the other sale, or of any of the other sales, to which sub-paragraph (i) relates,

the unit price of the goods for the purposes of the sale to which sub-paragraph (ii) relates;

- (d) where—
 - (i) there were 2 or more such sales that related to an equal number of units of goods and that number was greater than the number of units of goods to which the other sale, or any of the other sales, related; and
 - (ii) two or more of the sales to which sub-paragraph (i) relates were on common date and that date was earlier than the date of the other sale, or of any of the other sales, to which sub-paragraph (i) relates,

the unit price that is the lower, or lowest, of the unit prices of the goods for the purposes of the sales on that common date.

(5) Sub-section (4) does not apply in relation to goods to be valued unless the application of that sub-section in relation to the goods is requested by the owner of the goods.

(6) For the purposes of sub-sections (2), (3) and (4) a reference in any of those sub-sections to a sale of goods shall be read as a reference to a sale of goods that complies with the following requirements:

- (a) the sale was at the first trade level at which the goods were sold after the importation of the goods;
- (b) the sale was to a purchaser who, in the opinion of the Collector—
 - (i) was not related to the vendor of the goods at the time of the sale; and
 - (ii) did not supply, directly or indirectly, free of charge or at a reduced cost, any goods or services of a kind referred to in paragraph 159 (3) (c) for use in connection with the production of the goods;

- (c) the sale was, in the opinion of the Collector, a sale of a sufficient number of units of goods as to permit a proper determination of the price per unit of the goods.

(7) In determining the unit price of goods (in this sub-section referred to as "the goods concerned") in accordance with this section, the Collector shall make such deductions as he considers necessary, in accordance with generally accepted accounting principles, to take account of the following matters:

- (a) overseas freight and overseas insurance, and Australian freight and Australian insurance, paid or payable in connection with the goods concerned;
- (b) where the sale of the goods concerned is a sale on commission—commission usually earned in connection with the sale in Australia of imported goods of the same class or kind, and sold at the same trade level, as the goods concerned;
- (c) where the sale of the goods concerned is not a sale on commission—the amount usually added for profit and general expenses (including all costs, direct and indirect, of marketing the goods), taken as a whole, in connection with the sale in Australia of imported goods of the same class or kind, and sold at the same trade level, as the goods concerned;
- (d) where the goods concerned are goods to which sub-section (4) applies—the amount of the value added to the goods that is attributable to the assembly, packaging or further processing in Australia of the goods; and
- (e) any duties of customs and any other taxes paid or payable by reason of the importation of the goods concerned into Australia or the sale of the goods concerned in Australia.

(8) In this section—

"purchaser", in relation to goods the subject of a contract of sale, means the purchaser in relation to the contract of sale;

"unit price", in relation to goods the subject of a contract of sale, means the price, as determined by the Collector, of the goods in accordance with the contract of sale, divided by the number of the units of the goods;

"vendor", in relation to goods the subject of a contract of sale, means the vendor in relation to the contract of sale.

(9) Paragraph 154 (2) (b) does not apply in relation to the determination by the Collector of the price of goods for the purposes of the definition of "unit price" in sub-section (8).

Computed value of goods

161A. (1) This section applies in relation to goods if, and only if, the exporter is the producer of the goods.

(2) A Collector shall determine the computed value of goods in accordance with this section.

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(3) The computed value of goods is an amount determined by the Collector, in accordance with generally accepted accounting principles, to take account of the following matters:

- (a) the value of the materials used in producing the goods to be valued;
- (b) the costs, charges and expenses incurred by the producer in, or in connection with, the production of the goods to be valued;
- (c) packing costs or charges for materials or labour (including costs of packages and coverings that fall within item 12 in Schedule 2 to the *Customs Tariff Act 1966*⁶) incurred in connection with the goods to be valued to the extent that those costs or charges are not taken account of under paragraph (a) or (b);
- (d) the value of any of the following goods or services that have been supplied, directly or indirectly, by a person in Australia free of charge or at a reduced cost in connection with the production of the goods to be valued to the extent that that value is not taken account of under paragraph (a), (b) or (c):
 - (i) materials, components or other goods that form part of the goods to be valued;
 - (ii) tools, dies, moulds or other goods used in the production of the goods to be valued;
 - (iii) any materials consumed in the production of the goods to be valued;
 - (iv) engineering work, development work, art work or design work that was, or plans or sketches that were, required for the production of the goods to be valued, to the extent that the work was, or the plans or sketches were, undertaken outside Australia;
- (e) the value of any goods or services that have been supplied, directly or indirectly, by a person in Australia in connection with the production of goods or services specified in a sub-paragraph of paragraph (d) that have been supplied, directly or indirectly by that person (whether or not free of charge or at a reduced cost) in connection with the production of the goods to be valued to the extent that that value is not taken account of under paragraph (a), (b), (c) or (d);
- (f) inland freight and inland insurance usually payable in connection with the sale for export to Australia from the country of export of the goods to be valued of goods of the same class or kind as the goods to be valued sold by the producers to purchasers who are not related to those producers at the time of the sale;
- (g) profit and general expenses (including all costs, direct and indirect, of marketing the goods) taken as a whole usually added in a sale for export to Australia from the country of export of the goods to be valued of goods of the same class or kind as the goods to be valued sold by the producers to purchasers who are not related to those producers at the time of the sale.

(4) Sub-sections 159 (4), (5), (6), (7) and (8) apply in relation to the determination by a Collector of an amount under sub-section (3) of this section as if—

- (a) a reference in any of those sub-sections to sub-section 159 (3) were a reference to sub-section (3) of this section;
- (b) a reference in sub-section 159 (4) to sub-paragraph 159 (3) (c) (i) or (iii) were a reference to sub-paragraph (3) (d) (i) or (iii) of this section;
- (c) a reference in sub-section 159 (5) to sub-paragraph 159 (3) (c) (ii) were a reference to sub-paragraph (3) (d) (ii) of this section;
- (d) a reference in sub-section 159 (6) or (7) to sub-paragraph 159 (3) (c) (iv) were a reference to sub-paragraph (3) (d) (iv) of this section; and
- (e) a reference in sub-section 159 (8) to paragraph (3) (d) were a reference to paragraph (3) (e) of this section.

Value of goods to be in Australian currency

161B. (1) Where an amount that is, in accordance with this Division, required to be taken into account for the purpose of ascertaining the value of any imported goods is not an amount in Australian currency, the amount to be so taken into account shall be the equivalent in Australian currency of that amount, ascertained according to a fair rate of exchange at the date of exportation of the goods.

(2) For the purposes of this section, the Minister may, where he considers it desirable so to do for the avoidance of doubt, specify, by notice published in the *Gazette*—

- (a) a rate that is to be deemed to be, or to have been, a fair rate of exchange in relation to any currency upon a date, or during a period, preceding the date of publication of the notice; or
- (b) a rate that is to be deemed to be, or to have been, a fair rate of exchange in relation to any currency from the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.

(3) The rate of exchange specified in relation to any currency under sub-section (2) shall, in relation to the value of any goods exported on the day or during the period to which the rate so specified applies, be the rate of exchange to be applied for the purposes of sub-section (1) in respect of the currency specified in the notice.

(4) In any case in which the rate of exchange to be applied is not ascertainable by virtue of sub-section (3) and in which doubt exists as to the rate to be so applied, the Minister may specify a fair rate of exchange to be applied for the purposes of that case.

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Owner to be advised of value of goods

161C. (1) Where the Comptroller or a Collector has determined the amount of the value of goods in accordance with this Division, the Comptroller or the Collector shall advise the owner of the goods of the amount so determined.

(2) If the owner of goods so requests, in writing, within 28 days after being advised under sub-section (1) of the amount of the value of the goods determined in accordance with this Division, a Collector shall, within 28 days after the making of the request, furnish the owner with a notice in writing setting out—

- (a) the method by which the 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 of the goods was made and the information on which those calculations were based.

(3) Nothing in this section requires, or permits, the furnishing of information that—

- (a) relates to the personal affairs or business affairs of a person, other than the person making the request; and
- (b) is information—
 - (i) that was supplied in confidence;
 - (ii) the publication of which would reveal a trade secret;
 - (iii) that was furnished in compliance with a duty imposed by an enactment; or
 - (iv) the furnishing 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 request is made 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.

(4) In this section, "enactment" has the same meaning as in the *Administrative Decisions (Judicial Review) Act 1977*.

Review of determinations and other decisions

161D. (1) At any time within 12 months after the making of a determination or other decision by an officer under this Division, the Comptroller 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 concerned in accordance with this Division.

(2) Where, by reason that the Comptroller, under sub-section (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 Comptroller.

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 sub-section.

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

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

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

(4) Where the regulations are not complied with or the goods are not exported from Australia within that period of twelve months or that further period allowed by the Minister, the security may be enforced according to its

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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.

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

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

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

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

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

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

(7) Where security under this section is given by way of a payment of money or a deposit of an instrument transferable by delivery, the money shall

not be repaid or the instrument shall not be returned, as the case may be, until no duty is, or may become, payable on any goods to which the security relates that have been imported.

(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 Minister under that paragraph, a security in respect of the goods may be enforced according to its tenor or, where an undertaking to pay the amount of the duty on the goods has been given, that amount may be recovered at any time in a court of competent jurisdiction by proceedings in the name of the Comptroller or the Collector of Customs for a State or Territory.

Pallets used in international transport

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

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

(3) This section is in addition to, and not in derogation of, the provisions of sub-sections (5) and (6) of section 162A.

(4) In this section—

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

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

Refunds, &c., 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.

(2) In the last preceding sub-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 sub-sections (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

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diesel fuel or to diesel fuel only), payable to a person who purchases diesel fuel, being diesel fuel upon which duty has been paid, for use by him—

- (a) in mining operations or primary production (otherwise than for the purpose of propelling a road vehicle on a public road);
- (b) at residential premises 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.

(2) Where a person—

- (a) purchases diesel fuel for use by him in a manner referred to in sub-section (1); and
- (b) uses the diesel fuel otherwise than in a manner referred to in that sub-section,

then—

- (c) if rebate has not been paid under sub-section (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 sub-section (1) to the person in respect of the diesel fuel—the person shall, on demand in writing made by a Collector, 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 sub-section (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 1,000 litres.

(4) A Collector shall not refuse to consider an application made by a person for rebate under this section by reason only that the quantity of diesel fuel in respect of which the application is made is less than 1,000 litres if—

- (a) the application is the first application by the person for rebate under this section; or
- (b) a period of not less than 3 months has elapsed since the person last made an application for rebate under this section.

(5) The rebate payable under sub-section (1) to a person in respect of any diesel fuel is payable at the rate prescribed by the regulations as the rate of rebate for the purposes of this sub-section, being the rate in force at the time when the diesel fuel was purchased by that person.

(6) Rebates payable under sub-section (1) are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

(7) In this section—

“agriculture” means—

- (a) the cultivation of the soil;
- (b) the cultivation or gathering in of crops; or
- (c) the rearing of live-stock,

and includes—

- (d) viticulture, horticulture, pasturage or apiculture;
- (e) hunting or trapping carried on for the purpose of a business; or
- (f) other operations (including operations by way of pest or disease control or by way of soil or water conservation) connected with any operations referred to in paragraph (a), (b), (c), (d) or (e),

but does not include fishing operations or forestry;

“duty” has the same meaning as in sub-section 163 (1);

“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 raising of fish; or
- (c) the processing of fish on board vessels,

and includes oyster farming or pearling operations, but does not include operations conducted otherwise than for the purpose of a business;

“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 that is not situated in the forest or plantation in which the timber was felled; or
- (e) where timber is milled at a sawmill 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 is was felled to the sawmill;

“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;

“mining operations” means—

- (a) exploration, prospecting or mining for minerals; or
- (b) the dressing or beneficiation (at the mining site or elsewhere) of minerals, or ores bearing minerals, as an integral part of operations for their recovery,

and includes—

- (c) other operations connected with exploration, prospecting or mining for minerals that are carried out in, or at a place adjacent to, the area in which the exploration, prospecting or mining occurs;
- (d) where 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—the transporting of the minerals or ores from the mining site to the place where they are dressed or beneficiated;
- (e) the liquefying of natural gas;
- (f) where 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 means of evaporation,

but does not include quarrying operations carried on for the sole purpose of obtaining stone for building, road making or similar purposes;

“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;

"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.

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 Minister 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, &c., 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 Collector within twelve months from the date of the short levy or refund.

(2) For the purposes of sub-section (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 a Collector within 12 months from the date on which the rebate was paid.

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

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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**Dispute as to amount or rate of duty**

167. (1) If any dispute arises as to the amount or rate of duty payable in respect of any goods, or as to the liability of any goods to duty, under any Customs Tariff, or under any Customs Tariff or Customs Tariff alteration proposed in the Parliament, the owner of the goods may pay under protest the sum demanded by the Collector as the duty payable in respect of the goods, and thereupon the sum so paid shall, as against the owner of the goods, be deemed to be the proper duty payable in respect of 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) A protest in pursuance of this section shall be made by writing on the entry of the goods the words "Paid under protest" and adding a statement of the grounds upon which the protest is made, and, if the entry relates to more than one description of goods, the goods to which the protest applies, followed by the signature of the owner of the goods or his agent.

(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 ship” means a ship that is not currently engaged in making international voyages.

(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 ship that is not a prescribed ship or between the prescribed ship and an aircraft that is not a prescribed aircraft.

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 an aircraft that is not a prescribed aircraft or between the prescribed aircraft and a ship that is not a prescribed ship.

Penalty: \$25,000.

(4) A Collector may, when giving permission referred to in sub-section (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 sub-section (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 sub-section (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 to the Comptroller shall be read as including a reference to a Collector of Customs for a State or Territory.

Division 2—Rights and liabilities of agents**Authorized agents**

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

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

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

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

- (a) except where 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 sub-section (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.

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(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 sub-section (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 Comptroller may grant a person a licence in writing, to be known as an agents licence, to act as a customs agent at a place or places specified in the licence.

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

Application for licence

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;

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- (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 Comptroller is required to consider for the purposes of sub-paragraph 183CC (1) (a) (i) or paragraph 183CC (1) (b) or (c);
- (e) set out such particulars of the persons and matters that the Comptroller is required to consider for the purposes of sub-paragraph 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 Comptroller receives an application, he shall refer the application to the Committee for a report relating to the application and shall not grant, or refuse to grant, an agents licence to the applicant unless he has received and considered the report.

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

Requirements for grant of licence

183CC. (1) Where an application is made, the Comptroller 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;

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

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

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

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

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

(4A) The Comptroller shall, in determining whether a company is a fit and proper company to hold an agents licence for the purposes of sub-paragraph (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;
- (d) whether the company has been placed under official management; and
- (e) whether the company is being wound up.

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

Eligibility to be nominee

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 sub-section 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

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- (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 Comptroller 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 Comptroller 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 Comptroller shall not, in pursuance of sub-section (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 sub-section (3), the Comptroller may, upon application in writing by a customs agent and the production of his agents licence, vary the endorsements on the licence so that a place is specified, or ceases to be specified, in the licence as a place at which the holder of the licence may act as a customs agent.

(2) Subject to sub-section (3), the Comptroller may, upon application in writing by a 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 Comptroller shall not vary the endorsements on a licence so that the licence ceases to comply with sub-section 183C (2).

(4) A person shall not be endorsed under sub-section (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—a receiver of the property or part of the property of the company is appointed, the company is

placed under official management or the company commences 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 Comptroller 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 Comptroller 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 Comptroller to be necessary or desirable for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts.

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

s. 183CG

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

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

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

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

(4) Where the Comptroller renews a licence under sub-section (1), he may, in accordance with sub-section 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 Comptroller may, by notice in writing served on a person making an application for an agents licence or a person who holds an agents licence, require that person to give, within the time specified in the notice, security in an amount determined by the Comptroller, not being an amount exceeding the amount prescribed in respect of the prescribed class of applicants or customs agents to which the person belongs, by bond, guarantee or cash deposit, or by any or all of those methods, for compliance by him with the Customs Acts, for compliance with the conditions or requirements to which the importation or exportation of goods is subject and generally for the protection

of the revenue and that person is not entitled to be granted or to hold an agents licence, as the case may be, unless he gives security accordingly.

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

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

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

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

Fees

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 sub-section (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 Comptroller

s. 183CM

deletes the name of the nominee from that licence under section 183CP, whichever occurs first.

Removal of nominee

183CN. (1) The Comptroller 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 Comptroller, in writing, to delete his name from the licence; or
- (e) the name of the nominee is found to have been endorsed on the licence in circumstances where the endorsement should not have been made.

(2) Where the deletion of the name of a nominee from a licence of a customs agent is required under sub-section (1), the customs agent shall forthwith deliver the licence to the Comptroller 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 sub-section 183C (2), the Comptroller 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 sub-section.

Division 4—Suspension, revocation and non-renewal of licences**Investigation of matters relating to an agents licence**

183CQ. (1) The Comptroller may give notice in accordance with this section to a customs agent if he has reasonable grounds to believe that—

- (a) the customs agent has been convicted of a prescribed offence;
- (b) the customs agent, being a natural person, is an undischarged bankrupt;
- (c) the customs agent, being a company, is in liquidation;
- (d) the customs agent has ceased to perform the duties of a customs agent in a satisfactory and responsible manner;
- (e) the customs agent is guilty of conduct that is an abuse of the rights and privileges arising from his licence;
- (f) the customs agent has not, within 28 days after the day prescribed for the payment of any fees, paid those fees;
- (g) the customs agent made a false or misleading statement in the application for the licence;
- (h) the customs agent has not complied with a condition imposed on the grant or renewal of the licence and, having been served with a notice

under sub-section 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 Comptroller intends forthwith to refer to the Committee, for investigation and report to the Minister, the question whether the Minister should take action in relation to the licence under sub-section (1) of section 183CS;
- (c) the powers that the Minister may exercise in relation to a licence under sub-section 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 Comptroller gives notice in accordance with this section to a customs agent, he shall refer the question whether the Minister should take action in relation to the licence under sub-section 183CS (1) to the Committee, for investigation and report to the Minister.

(6) Where the Comptroller refers a question to the Committee under sub-section (5), he shall give particulars to the Committee of all the information in his possession that is relevant to the question so referred.

(7) Where a question is referred to the Committee under sub-section (5), the Committee shall, as soon as practicable, conduct an investigation into the question and make a report on the question to the Minister.

Interim suspension by Comptroller

183CR. (1) Where the Comptroller gives notice in accordance with section 183CQ to a customs agent, he may, if he considers it necessary for the protection of the revenue or otherwise in the public interest to do so, suspend the licence of the customs agent pending the investigation and report of the Committee.

s. 183CR

(2) The Comptroller may suspend the agents licence of a customs agent in pursuance of sub-section (1) by—

- (a) including in the notice to the customs agent in accordance with section 183CQ a statement to the effect that the licence is suspended under that sub-section; or
- (b) giving further notice in writing to the customs agent to the effect that the licence is suspended under that sub-section,

such notice to include also a statement that any person whose interests are affected by the suspension may make an application to the Administrative Appeals Tribunal for a review of the decision to suspend the licence.

(3) A suspension of a licence by the Comptroller under sub-section (1) has effect until the suspension is revoked by the Comptroller or the Minister has dealt with the matter in accordance with section 183CS, whichever first occurs.

(4) Where an agents licence is suspended under this section, the Comptroller may at any time revoke the suspension.

Powers of Minister

183CS. (1) Where the Minister, after considering a report under sub-section 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 sub-section 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 Minister, after considering a report under sub-section 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 sub-section (1) shall—

- (a) be in writing;
- (b) be served, either personally or by post, on the holder of the licence;
- (c) shall set out the ground or grounds for the decision of the Minister; and

- (d) state that any person whose interests are affected by the decision of the Minister may make an application to the Administrative Appeals Tribunal for a review of that decision.

(4) The period for which the Minister may suspend or further suspend a licence under sub-section (1) may be a period expiring after the date on which the licence, if not renewed, would expire.

(5) Where the Minister orders under paragraph (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 Comptroller under section 183CB;
- (b) to investigate and report on questions referred to it by the Comptroller under section 183CQ;
- (c) to advise the Minister in relation to the approval of courses of study under section 183CC; and
- (d) where the Minister requests the Committee to advise him on the standards that customs agents should meet in the performance of their

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duties and obligations as customs agents—to advise the Minister 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 Minister, 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 Minister 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 Minister, 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 Minister specifies, in writing signed by him, to be the office for the purposes of this sub-section.

(6) The appointment of a member is not invalidated, and shall not be called in question, by reason of a deficiency or irregularity in, or in connection with, his nomination or appointment.

Remuneration and allowances

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 sub-section (2), the Minister may appoint a person to act as Chairman—

- (a) during a vacancy in the office of Chairman; or

- (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is for any other reason, unable to perform the functions of his office.

(2) A person shall not be appointed to act as Chairman unless he is qualified, in accordance with sub-section 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 Minister determines.

Deputy member

183DD. (1) The Minister may appoint a person, on the nomination of an organization referred to in sub-section 183DA (4), to be the deputy of the member referred to in paragraph 183DA (1) (b) during the pleasure of the Minister 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 Minister specifies an office in the Department for the purposes of this sub-section, the person for the time being holding, or performing the duties of, that office shall be the deputy of the member referred to in paragraph 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 Minister 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

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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 sub-section (3), the Committee shall afford the person on whom a notice has been served in pursuance of sub-section (1) an opportunity of examining witnesses, of giving evidence and calling witnesses on his behalf and of addressing the Committee.

(3) Where the person on whom notice has been served in pursuance of sub-section (1) fails to attend at the time and place specified in the notice, the Committee may, unless it is satisfied that the person is prevented by illness or other unavoidable cause from so attending, proceed to hold the inquiry in his absence.

(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).

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- (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, &c.

183S. (1) In an inquiry before the Committee, the customs agent to whom the inquiry relates and the Minister are each entitled to be represented by a barrister or solicitor or, with the approval of the Committee, by some other person.

(2) A barrister, solicitor or other person appearing before the Committee may examine or cross-examine witnesses and address the Committee.

Protection of members

183T. (1) An action or proceeding, civil or criminal, does not lie against a member of the Committee for or in respect of an act or thing done, or report made, in good faith by the member of the Committee in his capacity as a member.

(2) An act or thing shall be deemed to have been done in good faith if the member or Committee by whom the act or thing was done was not actuated by ill-will to the person affected or by any other improper motive.

Protection of barristers, witnesses, &c.

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*****Power to pursue ships and aircraft**

184.² (1) Where the master of a ship refuses or fails to comply with a request under sub-section (1) or (2) of section 59 to 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 sub-section (4) of section 59 to land the aircraft for boarding, the person

in command of any aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is or are displayed may use his aircraft to chase, and, after firing a gun as a signal, fire at or into, the first-mentioned aircraft in order to compel it to be landed for boarding.

Search, &c., 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 sub-section 59 (1) or (2) or an aircraft that has been landed for boarding following a request under sub-section 59 (4).

(2) An officer may—

- (a) board and search the ship or aircraft;
- (b) search any goods found on the ship or aircraft;
- (c) require all persons found on the ship or aircraft to answer questions, and produce any documents in their possession, in relation to—
 - (i) the ship or aircraft, its voyage or flight and its cargo, stores, crew and passengers; or
 - (ii) the presence of those persons on the ship or aircraft; and
- (d) arrest without warrant any person found on the ship or aircraft who he believes on reasonable grounds has committed, is committing or attempting to commit, or is otherwise concerned in the commission of, an offence against this Act.

(3) If an officer suspects on reasonable grounds that the ship or aircraft has been, is being, or is about to be, used or otherwise involved in the commission or attempted commission of an offence against this Act, he may detain it and bring it, or cause it to be brought, to such port or airport as he thinks fit.

(4) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made by an officer under this section.

Penalty: \$1,000.

(5) In this section, "officer" includes any person who is in command, or a member of the crew, of the ship or aircraft from which the relevant request 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.

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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 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 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;
- (c) board an installation (other than an Australian installation) in respect of which permission under section 5A has been granted;
- (d) search any ship or aircraft or an installation of the kind referred to in paragraph (b) or (c); or
- (e) secure any goods on any ship or aircraft or on an installation of the kind referred to in paragraph (b) or (c).

Boarding

188.² 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: \$250.

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, &c., not to be broken

191.² 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: \$250.

Seals, &c., on ship or aircraft in port bound to another port within Commonwealth

192.² No fastening, lock, mark, or seal placed by an officer upon any goods or upon any door, hatchway, opening, or place for the purpose of securing any stores upon any ship or aircraft which has arrived in any port or airport from parts beyond the seas and which is bound to any other port or airport within the Commonwealth shall be opened, altered, broken, or erased except by authority; and if any ship or aircraft enters any port or airport with any such fastening, lock, mark, or seal opened, altered, broken, or erased contrary to this section, the master or pilot shall be guilty of an offence against this Act.

Penalty: \$500.

Officers may patrol coasts, &c.

193. Any officer and any person in his aid when on duty may patrol upon and pass freely along and over any part of the coast or any railway or the shores, banks, or beaches of any port by harbour lake or river.

Ships on service may be moored in any place

194. The officer in charge for the time being of any ship employed in the service of the Customs may haul any such ship upon any part of the coast or the shores banks or beaches of any port bay harbour lake or river and may moor any such ship thereon and continue such ship so moored as aforesaid for such time as he shall deem necessary.

Power to question passengers, &c.

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) or (c);
- (b) any person who has, or who the officer has reason to believe has, got off a ship or out of an aircraft; or
- (c) any person who the officer has reason to believe is about to board a ship or an aircraft,

as to whether that person or any child or other person accompanying him has on his person, in his baggage or otherwise with him any—

- (d) dutiable goods;
- (e) excisable goods;
- (f) goods the importation or exportation of which is prohibited by this Act or any other law of the Commonwealth; or
- (g) goods the importation or exportation of which is subject to restrictions, or to compliance with any conditions, under this Act or any other law of the Commonwealth.

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- (2) A person shall answer questions put to him in pursuance of sub-section (1).

Penalty: \$1,000.

Suspected persons—detention and search

196.⁷ If any officer of Customs or of police shall have reasonable cause to suspect that any person is unlawfully carrying or has any goods subject to the control of the Customs or any prohibited imports or any prohibited exports secreted about him the following consequences shall ensue:

- (1) The officer of Customs or of police may detain and search the suspected person.
- (2) Before the suspected person shall be searched he may require to be taken before a Justice or the Collector.
- (3) The Justice or Collector may order the suspected person to be searched or may discharge him without search.

But females shall only be searched by a female searcher appointed by the Justice or Collector.

196A and 196B.⁷ * * * * *

Power to question persons claiming packages

196C. (1) Where a person requests an officer of Customs to approve the delivery of goods for home consumption in accordance with section 71A, the officer may—

- (a) request the person to state his full name and residential address;
- (b) ask the person whether he is the owner of the goods;
- (c) where the person states that he is not the owner of the goods, request the person to state the full name and residential address of the owner of the goods; and
- (d) request the person to produce evidence of the correctness of the information given by him in compliance with a request made of him in pursuance of paragraph (a) or (c).

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a request made of him, or to answer a question put to him, in pursuance of sub-section (1).

Penalty: \$1,000.

(3) Where a person refuses or fails to comply with a request made of him, or to answer a question put to him, by an officer of Customs in pursuance of sub-section (1), the officer may—

- (a) detain the person for the purposes of establishing his identity; or
- (b) if the officer believes on reasonable grounds that there is no reasonable excuse for the person refusing or failing to so comply, detain the person and take him, without undue delay, before a Magistrate to be charged with an offence against sub-section (2).

(4) In this section, "owner", in relation to goods, means a person who has an interest in the goods.

Power to stop vehicles

197.² Any officer of Customs or police upon reasonable suspicion may stop and search any carriage for the purpose of ascertaining whether any dutiable goods are contained therein and the driver of any carriage shall stop and permit such search whenever required by any such officer.

Penalty: \$100.

Power to stop and search carriages carrying petrol, &c.

197A.² (1) The powers conferred by this section are conferred, and shall only be exercised, for the purpose of enabling officers of Customs to ascertain whether a carriage is carrying petrol or any other petroleum oil in respect of which any duty of Customs or duty of Excise is payable.

(2) An officer of Customs may request the driver of any carriage that he has reasonable cause to suspect is carrying petrol or any other petroleum oil to stop the carriage.

(3) The driver of a carriage that is, or is so constructed as to be capable of, carrying petrol or any other petroleum oil shall, when requested by an officer of Customs, stop the carriage.

(4) An officer of Customs may search any carriage that he has reasonable cause to suspect is carrying petrol or any other petroleum oil and inspect any documents in the possession of the driver relating to the goods being carried in the carriage.

(5) The driver of a carriage that is, or is so constructed as to be capable of, carrying petrol or any other petroleum oil shall, when requested by an officer of Customs, permit the officer to search the carriage and inspect any documents in the possession of the driver relating to the goods being carried in the carriage.

Penalty: \$100.

Writs of Assistance

198. The Supreme Court of any State or Territory having jurisdiction in the State or Territory where the application is made may grant a Writ of Assistance in the form of Schedule III hereto upon application made to him for that purpose by a Minister of State for the Commonwealth or by the Comptroller or the Collector of Customs for a State or Territory, and such writ unless superseded shall be in force so long as any person named therein remains an officer of Customs whether in the same capacity or not.

Customs Warrants

199. (1) The Comptroller, or the Collector of Customs for a State or Territory, may issue to any officer of Customs or officer of police a Customs

Warrant, in accordance with the form in Schedule IV, marked with a Customs Stamp.

(2) A Customs Warrant issued under the last preceding sub-section remains in force until the expiration of the period specified in the Warrant or until the Warrant is revoked, whichever first occurs.

(3) A Customs Warrant issued by a Collector of Customs for a State has force only in the State and a Customs Warrant issued by the Collector of Customs for the Northern Territory has force only in the Northern Territory.

Power to search

200. Any officer having with him a Writ of Assistance or a Customs Warrant in the form of Schedule IV hereto, or any officer of police having with him any such Warrant, may at any time in the day or night enter into and search any house premises or place and may break open the same and search any chests trunks or packages in which goods may be or are supposed to be.

Power to take assistants

201. Any officer acting under a Writ of Assistance or Customs Warrant in the form of Schedule IV hereto may take with him and have the assistance of any police officer and such assistants as he may think necessary.

Power to call for aid

202.² Any person lawfully making any seizure under any Customs Act may call upon any person present in the King's name to assist him, and such assistance shall be rendered accordingly.

Penalty: \$100.

Power to seize goods

203. (1) In this section, "authorized person" means—

- (a) a member of the Defence Force;
- (b) an officer of Customs; or
- (c) an officer of police.

(2) An authorized person may seize any forfeited goods or any goods that he believes on reasonable grounds are forfeited goods.

(3) Without limiting the generality of sub-section (2), the power to seize goods under that sub-section may be exercised at sea or in any other waters.

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 a class or kind of goods in which those goods are included.

(2) Where an officer of Customs seizes any goods other than narcotic-related goods under this Act, he shall take those goods to an approved place.

(3) Where a person other than an officer of Customs seizes any goods other than narcotic-related goods under this Act, he shall forthwith deliver the goods into the custody of an officer of Customs.

(4) Where a person other than a member of the Australian Federal Police seizes any narcotic-related goods under this Act, he shall forthwith deliver the goods into the custody of a member of the Australian Federal Police.

(5) Where goods are delivered to an officer of Customs in accordance with sub-section (3), the officer shall—

- (a) except where paragraph (b) applies—deliver the goods to an approved place; or
- (b) where the goods are delivered to him at an approved place, leave the goods at that place.

Seized goods

205. (1) In this section—

“appropriate person” means—

- (a) in relation to goods other than narcotic-related goods—
 - (i) the Comptroller;
 - (ii) a Collector of Customs for a State or Territory; or
 - (iii) a principal officer of Customs; and
- (b) in relation to narcotic-related goods—
 - (iv) the Commissioner of Police; or
 - (v) a Deputy Commissioner of Police;

“responsible person” means—

- (a) in relation to goods other than narcotic-related goods—the officer of Customs who seized the goods or to whom the goods were delivered under sub-section 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 sub-section 204 (4).

(2) Subject to this section, where goods are seized under section 203, the responsible person shall, as soon as is practicable, serve on the owner of the goods or the person who had possession, custody or control of the goods immediately before they were seized, either personally or by post, a notice in writing—

- (a) identifying the goods;
- (b) stating that the goods have been seized under section 203 and specifying the reason for the seizure;
- (c) setting out the terms of the provisions of sub-section (6); and

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- (d) specifying, and setting out the address of, an appropriate person and stating that any notice under sub-section (6) is to be given to that person.

(3) If a notice under sub-section (2) in respect of a ship or aircraft cannot conveniently be served in a manner required by that sub-section, that notice may be served by being affixed to a prominent part of the ship or aircraft.

(4) A responsible person is not required to serve a notice under sub-section (2) in relation to goods if, after making such inquiries as he thinks appropriate, he does not have sufficient information to enable him to serve the notice.

(5) Where—

- (a) a notice under sub-section (2) has not been served in respect of goods seized under section 203; and
- (b) within 30 days after the day on which the goods were seized, a person who claims to be a person entitled to be served with that notice gives an appropriate person sufficient information, in writing, to enable that notice to be served,

that appropriate person shall forthwith convey that information to the responsible person.

(6) Where a notice under sub-section (2) is served in respect of goods seized under section 203, the goods shall be deemed to be condemned as forfeited to the Crown unless, within 30 days after the day on which the notice was served, the owner of the goods or the person who had possession, custody or control of the goods immediately before they were seized gives notice, in writing, to the appropriate person specified in the notice under sub-section (2) stating that he claims the goods.

(7) Where, within 30 days after the day on which goods were seized under section 203—

- (a) a notice has not been served in respect of the goods by virtue of sub-section (4); and
- (b) a person claiming to be a person entitled to be served with that notice has not given an appropriate person sufficient information to enable that notice to be served,

the goods shall, on the expiration of that period of 30 days, be deemed to be condemned as forfeited to the Crown.

(8) Where a notice under sub-section (2) is served in respect of goods seized under section 203, the goods shall, for the purposes of this Act, be taken to be in the possession of the appropriate person specified in the notice.

Destruction of perishable goods

206. Notwithstanding sub-sections 205 (6) and (7), any live animal or goods of a perishable or hazardous nature seized under section 203 may be sold or destroyed in accordance with the directions of—

- (a) where the animal is, or the goods are, goods other than narcotic-related goods—a Collector; or
- (b) in any other case—the Commissioner of Police or a Deputy Commissioner of Police.

Dealing with seized ships that are unseaworthy

207. (1) This section applies to a ship—

- (a) that is in the possession of a Collector or a member of the Australian Federal Police by reason of having been seized as forfeited;
- (b) that has not been condemned; and
- (c) that the Collector or member has not been ordered by a court to deliver to another person.

(2) Where a Collector or a member of the Australian Federal Police in possession of a ship to which this section applies is satisfied that the ship is so unseaworthy that the custody or maintenance of the ship creates serious difficulties, the Collector or member may sell the ship or cause the ship to be destroyed.

Seized goods may be returned on security

208. (1) The Comptroller or a Collector of Customs for a State or Territory may authorize any goods other than narcotic-related goods seized under section 203 to be delivered to a person claiming those goods under sub-section 205 (6) on that person giving security—

- (a) to pay the value of those goods if they are condemned as forfeited to the Crown; and
- (b) where the whole or part of the duty on the goods has not been paid, to pay the duty or the balance of the duty payable on the goods if they are not condemned as forfeited to the Crown.

(2) The Commissioner of Police or a Deputy Commissioner of Police may authorize any narcotic-related goods, other than narcotic goods, seized under section 203 to be delivered to a person claiming those goods under sub-section 205 (6) on that person giving security—

- (a) to pay the value of those goods if they are condemned as forfeited to the Crown; and
- (b) where the whole or part of the duty on the goods has not been paid, to pay the duty or the balance of the duty payable on the goods if they are not condemned as forfeited to the Crown.

(3) Written security given in respect of goods delivered under sub-section (1) or (2) shall specify the value of those goods.

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(4) For the purposes of the Customs Acts, the value of goods delivered under sub-section (1) or (2) shall be taken to be the amount that, in the opinion of the person authorizing the delivery of the goods, is the market value of the goods at the time when they are delivered reduced by the amount of any duty on the goods that has been paid.

(5) For the purposes of section 132, goods to which sub-section (1) or (2) 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 delivered to a person in accordance with sub-section (1) or (2) of this section, as the case may be.

Collector may retain goods and require owner to proceed for restoration

208A. (1) Where notice under sub-section 205 (6) is given in respect of any goods seized under section 203, the Collector or member of the Australian Federal Police who is in possession of the goods may—

- (a) retain possession of the goods without taking any proceedings for the condemnation of the goods; and
- (b) may serve on the person who gave that notice, either personally or by post, a notice in writing requiring him to bring an action against him within 4 months of the service of the notice for the recovery of the goods.

(2) Where—

- (a) a notice under paragraph (1) (b) in relation to goods is given; and
- (b) the person to whom the notice was given does not, within 4 months after the service of the notice, bring an action for the recovery of the goods,

the goods shall be deemed to be condemned as forfeited to the Crown without any further proceedings.

(3) Where goods are delivered to a person under section 208—

- (a) any notice given under paragraph (1) (b) of this section in relation to the goods shall be deemed not to have been given; and
- (b) the person authorizing the delivery may serve on that person, either personally or by post, a notice in writing requiring him to bring an action within 4 months of the service of the notice seeking a declaration that the goods are not forfeited.

(4) Where—

- (a) a notice under sub-section (3) in relation to goods is served; and
- (b) the person on whom the notice was served does not within 4 months after the service of the notice, bring an action seeking a declaration that the goods are not forfeited,

the goods shall be deemed to be condemned as forfeited to the Crown without any further proceedings.

Proceedings relating to goods sold

208B. (1) Notwithstanding that goods have been sold or destroyed under section 206 or 207, a person may claim the goods under section 205, and proceedings for the recovery or condemnation of the goods may be instituted or continued, as if the goods were in the condition they were in immediately before they were sold or destroyed and remained in the possession of a Collector or a member of the Australian Federal Police.

(2) If, in any proceedings for the recovery or condemnation of goods sold or destroyed under section 206 or 207, the court decides that it would, but for the sale or destruction, have ordered that the goods be delivered to a person, the court shall order the payment by the Commonwealth to that person of an amount equal to—

- (a) where the goods have been sold—the proceeds of the sale; or
- (b) where the goods have been destroyed—the market value of the goods at the time of their destruction.

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 notice under sub-section 205 (2) or paragraph 208A (1) (b) 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 section 203 that are condemned, or deemed under sub-section 205 (6) or (7) or sub-section 208A (2) to be condemned, as forfeited to the Crown shall be dealt with and disposed of in accordance with the directions of—

- (a) in the case of goods other than narcotic-related goods—the Comptroller; or
- (b) in the case of narcotic-related goods—the Commissioner of Police or a Deputy Commissioner of Police.

Sales subject to conditions

208E. Where a ship or aircraft is sold under section 207 or sold or otherwise disposed of under section 208D, the ship or aircraft may be sold or disposed of subject to conditions, including, without limiting the generality of the foregoing—

- (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. (1) This section applies to dutiable goods that are forfeited by virtue of paragraph 229 (1) (a), (g), (i), (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 sub-section (3), where an officer finds goods that are, or that he has reason to believe are, goods to which this section applies in the course of a search of the baggage of a person who has arrived in Australia from a place outside Australia, the officer may, in lieu of seizing the goods under section 203, impound the goods.

(3) An officer shall not exercise his powers under sub-section (2) to impound goods found in the course of a search if, in the opinion of the officer, the total of the amounts of duty sought to be evaded in respect of goods to which this section applies found in the course of that search exceeds \$500.

(3A) Subject to sub-section (3B), where, by virtue of section 203, 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 sub-section (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 sub-section (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 \$500.

(4) Goods impounded under this section shall be taken to such place of security as the Collector directs.

(5) Where an officer impounds goods under this section, he shall as soon as is practicable, but not later than 7 days after the day on which the goods were impounded, serve on the owner of the goods, either personally or by post, a notice in writing—

(a) identifying—

- (i) where the goods are an article, the article;
- (ii) where the goods consist of separate articles, each of those articles; or
- (iii) in any other case, the goods,

and stating—

- (iv) where the goods were impounded under sub-section (2), that the article, articles or goods so identified have been impounded under that sub-section; or
- (v) where the goods were impounded under sub-section (3A), that the article, articles or goods so identified have been impounded under that sub-section;

- (b) setting out the amount of duty demanded in respect of the article, each of the articles, or the goods, identified in the notice;
- (c) setting out the date on which the goods were impounded;
- (d) setting out the terms of, or adequate particulars of the provisions of, sub-sections (6) and (7); and
- (e) specifying the address at which payment under sub-section (6) may be made in respect of the goods.

(6) Where the owner of an article or goods identified in a notice served under sub-section (5) pays to the Collector, at the address for payment shown in the notice and within 21 days after the day on which the notice was served, the duty demanded in respect of the article or goods (not being a payment under protest in accordance with section 167) together with an amount of penalty equal to—

- (a) where the notice states that the goods were impounded under sub-section (2), the amount of that duty; or
- (b) where the notice states that the goods were impounded under sub-section (3A), twice the amount of that duty,

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 sub-section (5) does not pay duty and penalty in respect of the article or goods in accordance with sub-section (6), the article or goods shall be deemed to have been seized under section 203 on the expiration of the last day of the period during which that duty and penalty were required to be paid and to have been so seized by the officer who served the notice.

(9) Neither the Commonwealth nor an officer or other person is under any liability in relation to the impounding of any goods under this section for which there was reasonable cause.

(10) For the purpose of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post on the owner of goods of a notice under sub-section (5), such a notice posted as a letter addressed to the owner at his last address known to the officer required to serve the notice shall be deemed to be properly addressed.

(11) A reference in this section to the baggage of a person who has arrived in Australia shall be read as including a reference to goods on his person or otherwise with him.

(12) A reference in this section to a search of the baggage of a person shall be read as including a reference to a search of such part of the baggage of a person as is available for search at a particular time.

Persons suspected of smuggling, &c.

210.² (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: \$100.

Arrested persons to go before Justices

212. Every person arrested may be detained until such time as he can without undue delay be taken before a Justice.

Powers of Justices with offenders

213. Any Justice before whom any person is brought under this Act may—

- (1) Commit such person to gaol until he can be brought before Justices to be dealt with according to law; or
- (2) Admit him to bail upon his giving sufficient security for his appearance before Justices at the time and place appointed for the hearing of the charge.

Production of documents, &c., in cases of seizure

214. (1) Whenever information in writing has been given on oath to the Collector that goods have been unlawfully imported exported undervalued or entered or illegally dealt with, or that it is intended to unlawfully import export undervalue enter or illegally deal with any goods, or whenever any goods have been seized or detained, the owner shall immediately upon being required so to do by the Collector produce and hand over to him all books and documents relating to the goods so imported exported entered seized or detained undervalued or illegally dealt with, or intended to be unlawfully imported exported undervalued entered or illegally dealt with, and of all other goods imported or exported by him at any time within the period of 5 years immediately preceding such request seizure or detention, and shall also produce for the inspection of the Collector or such other officer as he may authorize for that purpose and allow such Collector or officer to make copies of or extracts

from all books or documents of any kind whatsoever wherein any entry or memorandum appears in any way relating to any such goods.

Penalty: \$1,000.

(2) For the purposes of this section, the Comptroller or the Collector of Customs for a State or Territory may issue to any officer of Customs or officer of police a Customs Warrant, in accordance with the form in Schedule V, marked with a Customs stamp.

(2A) A Customs Warrant issued under the last preceding sub-section remains in force for one month after the date of the Warrant unless sooner revoked.

(2B) A Customs Warrant issued by a Collector of Customs for a State has force only in the State and a Customs Warrant issued by the Collector of Customs for the Northern Territory has force only in the Northern Territory.

(3) If any person fails to comply with a requirement by the Collector under this section, an officer of Customs or officer of police, having with him a Customs Warrant in the form of Schedule V hereto, may, at any time of the day or night, break open and enter into any house, premises or place in which any books or documents relating to the goods are or are supposed to be, and search—

- (a) the house, premises or place;
- (b) any person therein or thereon; and
- (c) any chests, trunks or packages therein or thereon,

and take possession of, remove and impound any of those books and documents which are found.

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 sub-section (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.

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(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 sub-section (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 sub-section (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 sub-section (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 (b), (e) or (f) 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 sub-section (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 sub-section (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.

(10) In this section, "authorized officer" means a Collector or an officer appointed by a Collector to be an authorized officer for the purposes of this section.

Powers of officers for purposes of the 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 sub-section (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 sub-section (1) shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his powers under sub-section (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 sub-section (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 sub-section (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 sub-section (4) and, for that purpose, may administer an oath or affirmation to that person.

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(8) The oath or affirmation to be made by a person for the purposes of sub-section (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.

(10) In this section, "authorized officer" means a Collector or an officer appointed by a Collector to be an authorized officer for the purposes of this section.

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—

"Judge" means—

- (a) a Judge of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory;

- (b) a Judge of the Supreme Court of a State in respect of whom an appropriate arrangement in force under section 11 is applicable; or
- (c) a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in paragraph (a) and in respect of whom an appropriate arrangement in force under section 11 is applicable;

"listening device" means any instrument, device or equipment capable of being used, whether alone or in conjunction with any other instrument, device or equipment, to record or listen to spoken words;

"narcotics offence" means an offence punishable as provided by section 235.

(2) In this Division, unless the contrary intention appears—

- (a) a reference to narcotics inquiries that are being made by members of the Australian Federal Police shall be read as a reference to—
 - (i) inquiries that are being made by members of the Australian Federal Police in relation to a narcotics offence that has been committed or is reasonably suspected of having been committed; or
 - (ii) if there are circumstances reasonably giving rise to the suspicion that a narcotics offence is likely to be committed—inquiries that are being made by members of the Australian Federal Police in relation to the likely commission of that offence; and
- (b) a reference to narcotics inquiries that have been made by members of the Australian Federal Police shall be read as a reference to—
 - (i) inquiries that have been made by members of the Australian Federal Police in relation to a narcotics offence that has been committed or was reasonably suspected of having been committed; or
 - (ii) if there have been circumstances that reasonably gave rise to the suspicion that a narcotics offence was likely to be committed—inquiries that have been made by members of the Australian Federal Police in relation to the likely commission of that offence.

Use of listening devices

219B. (1) It is unlawful for a member of the Australian Federal Police to use for the purposes of narcotics inquiries that are being made by members of the Australian Federal Police, a listening device for the purpose of listening to or recording words while they are being spoken by a person unless—

- (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;

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- (b) not being a person permitted to listen to or record the words under paragraph (a), he does so with the consent, express or implied, of such a person; or
- (c) he does so in accordance with a warrant issued under this Division.

(2) It is unlawful for a person acting by arrangement with a member of the Australian Federal Police to use, for the purpose of narcotics inquiries that are being made by members of the Australian Federal Police, a listening device for the purpose of listening to or recording words while they are being spoken by a person unless he is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard.

(3) It is the duty of the Commissioner of Police to take reasonable steps to ensure that sub-sections (1) and (2) are not contravened.

(4) Notwithstanding any law of a State or Territory—

- (a) a member of the Australian Federal Police does not act unlawfully by reason only of using a listening device as referred to in sub-section (1) in circumstances to which paragraph (a), (b) or (c) of that sub-section is applicable; and
- (b) a person acting by arrangement with a member of the Australian Federal Police does not act unlawfully by reason only of using a listening device as referred to in sub-section (2) in circumstances in which the use of that device is not declared to be unlawful by that sub-section.

(5) Where, upon application being made to a Judge by a member of the Australian Federal Police for the issue of a warrant under this section authorizing the use of a listening device in relation to a particular person, the Judge is satisfied, by information on oath, that—

- (a) the person has committed, or is suspected on reasonable grounds of having committed, or of being likely to commit, a narcotics offence; and
- (b) the use by members of the Australian Federal Police of a listening device to listen to or record words spoken by or to that person will, or is likely to, assist members of the Australian Federal Police in or in connection with—
 - (i) inquiries that are being made in relation to a narcotics offence that the person has committed or is reasonably suspected of having committed; or
 - (ii) if there are circumstances reasonably giving rise to the suspicion that the person is likely to commit a narcotics offence—inquiries that are being made in relation to the likely commission, by that person, of that offence,

the Judge may, by warrant under his hand in accordance with the prescribed form, authorize members of the Australian Federal Police, subject to any

conditions or restrictions that he sees fit to specify in the warrant, to use a listening device for the purpose of listening to or recording words spoken by, to or in the presence of that person, and such a warrant may authorize members of the Australian Federal Police to enter any premises in which the person is, or is likely to be, for the purpose of installing, maintaining, using or recovering a listening device or a part of a listening device.

(6) A Judge may grant a warrant under sub-section (5) authorizing the use of a listening device for the purpose of listening to or recording words spoken by, to or in the presence of a person anywhere in Australia.

(7) Where, upon application being made to a Judge by a member of the Australian Federal Police for the issue of a warrant under this section authorizing the use of a listening device in relation to particular premises, the Judge is satisfied, by information on oath, that—

- (a) there are reasonable grounds for suspecting that the premises have been, or are likely to be, used in connection with the commission of a narcotics offence; and
- (b) the use by members of the Australian Federal Police of a listening device to listen to or record words spoken by or to persons in those premises will, or is likely to, assist members of the Australian Federal Police in, or in connection with, inquiries that are being made in relation to the use, or likely use, of the premises in connection with the commission of a narcotics offence,

the Judge may, by warrant under his hand in accordance with the prescribed form, authorize members of the Australian Federal Police, subject to any conditions or restrictions that he sees fit to specify in the warrant, to use a listening device for the purpose of listening to or recording words spoken by or to any person while the person is in those premises, and such a warrant may authorize members of the Australian Federal Police to enter those premises for the purpose of installing, maintaining, using or recovering a listening device or a part of a listening device.

(8) A Judge may grant a warrant under sub-section (7) authorizing the use of a listening device in respect of premises situated anywhere in Australia.

(9) Where a warrant under this section authorizes entry on premises the warrant shall state whether entry is authorized to be made at any time of the day or night or only during specified hours and may, if the Judge issuing the warrant thinks fit, provide that entry may be made without permission first being sought or demand first being made, and authorize measures that he is satisfied are necessary for that purpose.

(10) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 6 months.

(11) Sub-section (10) shall not be construed as preventing the issue of any further warrant.

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(12) Nothing in this section, or in a warrant under this section, applies to or in relation to the use of a listening device for a purpose that would, for the purposes of the *Telecommunications (Interception) Act 1979*, constitute the interception of a communication passing over a telecommunications system controlled by the Australian Telecommunications Commission.

Information to be given in support of application for warrant

219C. Information furnished to a Judge for the purposes of sub-section 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 under section 219B on members of the Australian Federal Police shall be exercised only by the Commissioner of Police and members of the Australian Federal Police approved, for the purposes of that warrant or of warrants issued under that section, by him or by an authorized member of the Australian Federal Police.

(2) In sub-section (1), "authorized member of the Australian Federal Police" means a member of the Australian Federal Police appointed by the Commissioner of Police, by writing, to be an authorized member of the Australian Federal Police for the purposes of this section.

Discontinuance of action before expiration of warrant

219E. Where, before a warrant under this Division ceases to be in force, the Commissioner of Police is satisfied that the grounds on which the warrant was issued have ceased to exist, he shall—

- (a) forthwith take such steps as are necessary to ensure that action in pursuance of the warrant (other than the recovery of a listening device or a part of a listening device) is discontinued; and
- (b) by instrument under his hand, revoke the warrant.

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 members of the Australian Federal Police, being information that has come to his knowledge or into his possession by reason of his being, or having been, a member of the Australian Federal Police or by reason of his having entered into an arrangement with a member of the Australian Federal Police to use a listening device for the purpose of those inquiries, except for the purposes of those inquiries.

Penalty: \$1,000 or imprisonment for 2 years.

(2) Notwithstanding sub-section (1), the Commissioner of Police may, in accordance with the following paragraphs, by himself or by a member of the Australian Federal Police authorized by him, communicate information obtained by using a listening device for the purpose of narcotics inquiries that are being, or have been, made by members of the Australian Federal Police—

- (a) where the information relates, or appears to relate, to the commission, or intended commission, of an offence against the law of the Commonwealth or of a State or Territory, being an offence punishable by imprisonment for life or for a period, or maximum period, of not less than 3 years—the information may be communicated to a member of the Australian Federal Police for the purposes of investigations into the offence, or to an officer of the Police Force of a State or Territory;
- (b) where the information relates, or appears to relate, to activities that constitute, or to intended activities that would constitute, activities prejudicial to security, within the meaning of the *Australian Security Intelligence Organization Act 1979*—the information may be communicated to the person holding, or performing the duties of, the office of Director-General of Security under that Act.

(3) Without limiting the purposes for which a person may, in accordance with sub-section (1), divulge information, a person may divulge or communicate information obtained by using a listening device for the purpose of narcotics inquiries that are being, or have been, made by members of the Australian Federal Police in evidence in a proceeding—

- (a) by way of a prosecution for a narcotics offence or for any other offence against the law of the Commonwealth or of a State or Territory punishable by imprisonment for life or for a period or maximum period of not less than 3 years;
- (b) by way of an application for an order under sub-section 243B (1); or
- (c) for the condemnation or recovery of a ship or aircraft, or of goods, seized under section 203 in connection with the commission of a narcotics offence.

(4) Where a person is prosecuted before a Court for an offence of a kind referred to in paragraph (a) of sub-section (3), the Court may, in its discretion, refuse to permit information referred to in that sub-section to be given in evidence in the proceedings if it is satisfied that it would be unfair to the accused to admit the information in evidence.

Certain records to be destroyed

219G. Where, by virtue of a warrant under this Division, any record or copy has been made and the Commissioner of Police is satisfied—

- (a) that the record or copy will not assist, and is not likely to assist, members of the Australian Federal Police in, or in connection with narcotics inquiries that are being, or have been, made by them; and

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(b) that the record or copy is not required, and is not likely to be required—

- (i) in, or in connection with, proceedings with respect to any narcotics offence or of a kind referred to in paragraph 219F (3) (b) or (c); or
- (ii) in, or in connection with, the exercise by members of the Australian Federal Police of the powers conferred on the Commissioner of Police by sub-section 219F (2),

the Commissioner of Police shall cause the record or copy to be destroyed.

Warrants, &c., to be retained

219H. The Commissioner of Police shall cause to be retained in the records of the Australian Federal Police all warrants issued under section 219B, all documents furnished to a Judge in connection with the issue of those warrants, and all instruments issued under section 219E revoking warrants so issued.

Reports to be made to Minister concerning use of listening devices

219K. (1) The Commissioner of Police shall furnish to the Minister a copy of each warrant issued under section 219B, a copy of all documents furnished to a Judge in connection with the issue of the warrant and each instrument issued under section 219E revoking the warrant as soon as practicable after the issue or revocation of a warrant.

(2) The Commissioner of Police shall furnish to the Minister, in respect of each warrant issued under section 219B, a report in writing with respect to the use made by members of the Australian Federal Police of information obtained by using a listening device in pursuance of the warrant and the communication of any information so obtained to persons other than members of the Australian Federal Police.

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 proceeding shall be commenced against any officer for anything done in execution of or by reason of his office until one month next after notice in writing shall have been delivered to him or left at his usual place of abode by the plaintiff his attorney or agent in which notice shall be clearly stated the cause and nature of the proceeding and the court in which the same is intended to be instituted, the name and place of abode of the plaintiff and the name and place of business of such attorney or agent unless the Supreme Court of a State,

the Supreme Court of the Australian Capital Territory or the Supreme Court of the Northern Territory of Australia has granted leave to the plaintiff to proceed without notice, which leave the Court may grant on such terms as it thinks just.

Defect in notice not to invalidate

222. No notice under the last preceding section shall be deemed invalid by reason of any defect or inaccuracy therein unless the Court is of opinion that the defect or inaccuracy would prejudice the defendant in his defence and the Court may give leave to amend such notice as it thinks just.

No evidence to be produced but that contained in notice

223. Upon any proceeding instituted in pursuance of such notice the plaintiff shall not be at liberty to advance any evidence of any cause of action except such as has been distinctly stated in such notice nor shall the plaintiff be entitled to a verdict without proving on the trial that such notice has been duly served.

Officer may tender amends

224. It shall be lawful for any officer to whom notice of proceeding shall have been given at any time within one month after such notice to tender amends to the plaintiff his attorney or agent and in case such amends be not accepted to plead such tender in defence either alone or with other defences and if the amends tendered shall be found to have been sufficient no costs shall be recovered against an officer and he shall be entitled to costs if he shall have brought the amount into court when entering his defence.

Commencement of proceedings against officers

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

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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. The following ships or boats not exceeding 250 tons registered tonnage 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 sub-section 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 250 tons registered tonnage which would be forfeited if the ship were less than 250 tons registered tonnage shall be liable to a penalty not exceeding \$10,000, and the ship may be detained until the penalty is paid or until security is given for its payment.

Forfeited installations

228A. Any overseas installation that becomes attached to the Australian seabed without the permission of the Comptroller given under sub-section 5A (2) shall be forfeited to the Crown.

Forfeited goods

229. (1) The following goods shall be forfeited to the Crown:

- (a) All goods which are smuggled, or unlawfully imported, exported, or conveyed.
- (b) All prohibited imports.
- (ba) All goods the importation of which has been prohibited unless a licence or permission containing conditions or requirements has been granted and those conditions or requirements have not been complied with.
- (bb) Any goods sold under section 207 or sold or otherwise disposed of under section 208D subject to a condition that has not been complied with.
- (c) All goods imported or exported in any ship boat or aircraft in which goods are prohibited to be imported or exported.
- (d) All dutiable goods found on any ship boat or aircraft being unlawfully in any place.
- (e) All goods found on any ship or aircraft after arrival in any port or airport and not being specified or referred to in the Inward Manifest and not being baggage belonging to the crew or passengers and not being satisfactorily accounted for.
- (f) All goods in respect of which bulk is unlawfully broken.
- (g) All goods subject to the control of the Customs that are moved, altered or interfered with except as authorized by this Act.
- (h) All goods which by this Act are required to be moved or dealt with in any way and which shall not be moved or dealt with accordingly.
- (i) All goods in respect of which any entry invoice declaration answer statement or representation which is false or wilfully misleading in any particular has been delivered made or produced.
- (j) Any carriage or animal used in smuggling or in the unlawful importation, exportation, or conveyance of any goods.

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- (m) All goods not being passengers' baggage found on any ship or aircraft after clearance and not specified or referred to in the Outward Manifest and not accounted for to the satisfaction of the Collector.
- (n) All prohibited exports put on any ship boat or aircraft for export or brought to any wharf or place for the purpose of export.
- (o) All dutiable goods concealed in any manner.
- (p) Any package having concealed therein goods not enumerated in the entry or being so packed as to deceive the officer.
- (q) All dutiable goods found in the possession or in the baggage of any person who has got out of, landed from or gone on board any ship boat or aircraft and who has denied that he has any dutiable goods in his possession, or who when questioned by an officer has not fully disclosed that such goods are in his possession or baggage.
- (r) All goods offered for sale on the pretence that the same are prohibited or smuggled goods.

(2) Notwithstanding section 228, this section applies in relation to ships, boats and aircraft as well as other goods.

Proceeds of drug trafficking liable to forfeiture

229A. (1) In this section, unless the contrary intention appears—

“cheque” includes a bill, promissory note or other security for money;

“goods” includes cheques, but does not include moneys in the form of cash;

“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 sub-section (2), be deemed to be moneys that came into his possession or under his control, or were paid to him, in the circumstances in which he obtained possession or control of the cheque, or was paid the moneys by the cheque.

(4) Where a person who purchases or otherwise acquires goods pays the whole or substantially the whole of the amount paid by him for the goods by means of a cheque that came into his possession or under his control as set out in paragraph (2) (a), the goods shall, for the purposes of sub-section (2), be deemed to have come into his possession or under his control in the circumstances in which the cheque came into his possession or under his control.

(5) For the purposes of paragraph (2) (c), goods shall not be taken to have been purchased with or out of moneys to which this section applied unless the whole, or substantially the whole, of the moneys paid for the goods were moneys to which this section applied.

(6) For the purposes of section 203, moneys or goods to which this section applies shall be deemed to be forfeited goods and, upon moneys or goods to which this section applies being seized in pursuance of section 203, they shall, for the purposes of sections 204 to 208E (inclusive) and Part XIV, be deemed to be forfeited goods, and those provisions apply accordingly.

(7) Where, in any proceedings for the condemnation or recovery of moneys or goods to which this section applies and which have been seized under section 203, the Court is satisfied that the relevant narcotic goods are goods reasonably suspected of having been imported into Australia in contravention of this Act, the Court shall, for the purposes of the proceedings, treat the narcotic goods as narcotic goods which have been imported into Australia in contravention of this Act unless it is established to the satisfaction of the Court that the narcotic goods were not imported into Australia or were not imported into Australia in contravention of this Act.

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(8) Without limiting any powers that are conferred on a Court by the provisions of this Act specified in sub-section (6) and notwithstanding any other provision of this Act—

- (a) where moneys or goods in the possession or under the control of a person are seized under section 203, a Court in which proceedings are brought for the condemnation or recovery of the moneys or goods shall, if it is satisfied that the moneys or goods were, at the time when they were so seized, owned by another person who, when he became the owner of the moneys or goods, did not know, and had no reason to suspect, that the moneys or goods had come into the possession or under the control of the first-mentioned person in circumstances referred to in sub-section (2), direct that the moneys or goods be delivered to that other person; and
- (b) where moneys or goods in the possession or under the control of the licensee of a warehouse are seized under section 203, a Court in which proceedings are brought for the condemnation or recovery of the moneys or goods shall direct that the moneys or goods be delivered to the licensee if it is satisfied that—
 - (i) the moneys came into the possession or under the control of the licensee by reason of his storing in the warehouse narcotic goods imported into Australia in contravention of this Act or by reason of his selling goods that were acquired by him with or out of any such moneys; or
 - (ii) the goods were purchased or otherwise acquired by him out of moneys that so came into his possession or under his control,as the case may be, and is also satisfied that the licensee did not know that the goods stored in the warehouse were narcotic goods or that they had been imported into Australia in contravention of this Act.

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

232.² 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.² 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.

232B.² * * * * *

Smuggling and unlawful importation and exportation

233. (1) A person shall not—

- (a) smuggle any goods; or

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- (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 sub-section (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 sub-section 233AB (1); or
- (b) in any other case—as provided by sub-section 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 sub-section (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 sub-section 233AB (1); or
- (c) in any other case—as provided by sub-section 233AB (2).

Penalties for offences against sections 233 and 233A

233AB. (1) Where an offence is punishable as provided by this sub-section, the penalty applicable to the offence is—

- (a) where the Court can determine the amount of the duty that would have been payable on the 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 sub-section, 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
- (b) imports, or attempts to import, into Australia any prohibited imports to which this section applies or exports, or attempts to export, from Australia any prohibited exports to which this section applies; or
- (c) without reasonable excuse (proof whereof shall lie upon him) has in his possession, or attempts to obtain possession of, any prohibited imports to which this section applies which have been imported into Australia in contravention of this Act; or
- (ca) without reasonable excuse (proof whereof shall lie upon him) has in his possession, or attempts to obtain possession of, any prohibited imports to which this section applies which are reasonably suspected of having been imported into Australia in contravention of this Act; or
- (cb) conspires with another person or other persons to import into Australia any prohibited imports to which this section applies or to

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export from Australia any prohibited exports to which this section applies; or

- (d) aids, abets, counsels, or procures, or is in any way knowingly concerned in, the importation into Australia of any prohibited imports to which this section applies, or the exportation from Australia of any prohibited exports to which this section applies; or
- (e) fails to disclose to an officer on demand any knowledge in his possession or power concerning the importation or intended importation into Australia of any prohibited imports to which this section applies or the exportation or intended exportation from Australia of any prohibited exports to which this section applies;

shall be guilty of an offence.

(1A) On the prosecution of a person for an offence against the last preceding sub-section, being an offence to which paragraph (c) of that sub-section applies, it is not necessary for the prosecution to prove that the person knew that the goods in his possession or of which he attempted to obtain possession had been imported into Australia in contravention of this Act, but it is a defence if the person proves that he did not know that the goods in his possession or of which he attempted to obtain possession had been imported into Australia in contravention of this Act.

(1B) On the prosecution of a person for an offence against sub-section (1), being an offence to which paragraph (ca) of that sub-section applies, it is a defence if the person proves that the goods were not imported into Australia or were not imported into Australia in contravention of this Act.

(1C) Any defence for which provision is made under either of the last 2 preceding sub-sections in relation to an offence does not limit any defence otherwise available to the person charged.

(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 sub-section (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.

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) Make or give any entry which is false in any particular;

- (e) Make in any declaration or document produced, given, delivered or furnished to any officer any statement which is untrue in any particular or produce, give, deliver or furnish to any officer any declaration or document containing any such statement;
- (f) Mislead any officer in any particular likely to affect the discharge of his duty;
- (g) Refuse or fail to answer questions or to produce documents;
- (h) Sell or offer for sale, any goods upon the pretence that such goods are prohibited imports or smuggled goods.

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

(a) in the case of an offence against paragraph (1) (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) in the case of an offence against paragraph (1) (d), (e) or (f), 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.

Penalty: \$1,000.

Places set aside for purposes of Act

234AA. Where a place is to be used by officers—

- (a) for questioning, for the purposes of this Act or of any other law of the Commonwealth, passengers disembarking from or embarking on a ship or aircraft;
- (b) for examining, for such purposes, the personal baggage of such passengers; or
- (c) as a holding place for such passengers,

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a Collector, or a person authorized by a Collector to do so, may cause signs to be displayed at or near the place that identify the place and state that entry into it by unauthorized persons is prohibited by this Act.

Unauthorized entry to places and on ships, aircraft or wharves

234A.² (1) A person, other than a passenger disembarking from, or embarking on, a ship or aircraft, shall not, except by authority—

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- (a) enter into, or be in, a place in relation to which a sign is displayed under section 23AA; or
 - (b) enter on or be in or on—
 - (i) a ship;
 - (ii) an aircraft; or
 - (iii) the wharf at which, or the part of a wharf adjacent to which, a ship is berthed,

at a time when goods being the personal baggage of passengers disembarking from, or embarking on that ship or aircraft are being examined, for the purposes of this Act, at or in the vicinity of the ship, aircraft, wharf or part of a wharf.

Penalty: \$100.

(2) The last preceding sub-section does not prohibit a person—

- (a) who has, or is a member of an authority which has, the management or control of a wharf or wharves or an airport or airports; or
- (b) who is employed in connexion with the management or control of a wharf or wharves or an airport or airports,

from entering on, or being in or on, a place, ship, aircraft, wharf or part of a wharf for the purposes of that management or control.

(3) In any proceedings for the prosecution of a person for an offence against sub-section (1), evidence that a sign stating that entry into a place is prohibited by this Act was displayed at or near that place is *prima facie* evidence that the sign was so displayed in accordance with section 234AA.

Penalties for offences in relation to narcotic goods

235. (1) Where—

- (a) a person commits an offence against sub-section 50 (4) or sub-section 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 sub-sections (3) and (7), where—

- (a) a person commits an offence against sub-section 231 (1), section 233A or sub-section 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 consist of a quantity of a prescribed narcotic substance that is not less than the commercial quantity applicable to that substance; or

(ii) that the narcotic goods in relation to which the offence was committed consist of a quantity of a narcotic substance that is not less than the traffickable quantity applicable to that substance and also that, on a previous occasion, a court has—

(A) convicted the person of another offence, being an offence against a provision referred to in paragraph (a) that involved other narcotic goods which consisted of a quantity of a narcotic substance not less than the traffickable quantity that was applicable to that substance when the offence was committed; or

(B) found, without recording a conviction, that the person had committed another such offence—

imprisonment for life or for such period as the Court thinks appropriate;

(d) where the Court is satisfied that the narcotic goods in relation to which the offence was committed consist of a quantity of a narcotic substance that is not less than the traffickable quantity applicable to the substance but is not satisfied as provided in paragraph (c)—

(i) if the narcotic substance is a narcotic substance other than cannabis—a fine not exceeding \$100,000 or imprisonment for a period not exceeding 25 years, or both; or

(ii) if the narcotic substance is cannabis—a fine not exceeding \$4,000 or imprisonment for a period not exceeding 10 years, or both; or

(e) in any other case—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 2 years, or both.

(3) Where—

(a) the Court is satisfied that the narcotic goods in relation to which an offence referred to in sub-section (2) was committed consist of a quantity of a narcotic substance that is not less than the traffickable quantity applicable to that substance, but is not satisfied as provided in paragraph (c) of that sub-section in relation to those narcotic goods; and

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- (b) the Court is also satisfied that the offence was not committed by the person charged for any purposes related to the sale of, or other commercial dealing in, those narcotic goods,

notwithstanding paragraph (d) of that sub-section, the penalty punishable for the offence is the penalty specified in paragraph (e) of that sub-section.

(4) An offence referred to in sub-section (1) or (2) may be prosecuted summarily or upon indictment or, where the law of the State or Territory in which the proceedings are brought makes provision for an offender who pleads guilty to a charge to be dealt with by the Court otherwise than on indictment, the Court may deal with an offender in accordance with that law.

(5) Nothing in sub-section (4) renders an offender liable to be punished more than once for the same offence.

(6) Where proceedings for an offence referred to in sub-section (1) or (2) are brought in a court of summary jurisdiction, the court may commit the defendant for trial or to be otherwise dealt with in accordance with law or, if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent to it doing so, may determine the proceedings summarily.

(7) Where a court of summary jurisdiction determines proceedings summarily in accordance with sub-section (6), it shall not impose a fine exceeding \$2,000 or sentence the defendant to imprisonment for a period exceeding 2 years, but may impose both a fine and a period of imprisonment in respect of the offence.

(8) For the purposes of sub-sections (2) and (3), the narcotic substance of which narcotic goods in relation to which an offence has been 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.

Division 3—Recovery of Pecuniary Penalties for Dealings in Narcotic Goods**Interpretation**

243A. (1) In this Division, unless the contrary intention appears—

“cheque” includes a bill, promissory note or other security for money;

“Court” means the Federal Court of Australia;

“moneys” means moneys in the form of cash;

“Official Trustee” means the Official Trustee in Bankruptcy;

“pecuniary penalty” means a pecuniary penalty referred to in section 243B;

“petition” means a petition under the *Bankruptcy Act 1966*;

“property” means real or personal property of every description, whether situated in Australia or elsewhere, and includes any estate, interest or profit, whether present or future, vested or contingent, arising out of or incident to any such real or personal property.

(2) Where a person who has obtained possession or control of a cheque, or was paid moneys by a cheque, in any of the circumstances set out in sub-section (3), receives, in respect of the cheque, moneys in the form of cash, the moneys so received shall, for the purposes of this Division, be deemed to be moneys that came into his possession or under his control, or were paid to him, in the circumstances in which he obtained possession or control of the cheque, or was paid the moneys by the cheque.

(3) For the purposes of this Division, a person shall be taken to engage in a prescribed narcotics dealing if—

- (a) he sells or otherwise deals in, or agrees to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act;
- (b) he imports, or agrees to import, narcotic goods into Australia in contravention of this Act;
- (c) he exports, or agrees to export, narcotic goods from Australia in contravention of this Act;
- (d) he keeps, or agrees to keep, in his possession narcotic goods imported into Australia in contravention of this Act;
- (e) he conspires with another person or other persons to import any narcotic goods into Australia, or to export any narcotic goods from Australia, in contravention of this Act; or
- (f) he aids, abets, counsels or procures, or is in any way knowingly concerned in, the sale of, or other dealing in, narcotic goods imported into Australia in contravention of this Act, the importation of narcotic goods into Australia, or the exportation of narcotic goods from Australia, in contravention of this Act, or the keeping in the possession of any person of narcotic goods imported into Australia in contravention of this Act.

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(4) A reference in this Division to the property of a person shall be read as a reference to the property in respect of which the person has a beneficial interest.

(5) Where, upon application being made to the Court under sub-section 243E (1) and supported by an affidavit made by a member of the Australian Federal Police or an officer of Customs stating that he believes that any property is the property of a person, the Court makes an order under that section directing the Official Trustee to take control of that property, for the purposes of this Division, the property shall, while that order applies to the property, be deemed to be the property of that person.

(6) A reference in this Division to a proceeding for the recovery of a pecuniary penalty shall be read as a reference to a proceeding instituted under section 243B for an order under sub-section (1) of that section.

(7) Where, by reason of a person's having been engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, benefits have been derived by another person at the request, or by the direction, of the first-mentioned person, those benefits shall, for the purposes of this Division, be deemed to have been derived by that first-mentioned person by reason of his having been engaged in that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be.

Pecuniary penalties

243B. (1) Subject to sub-section (7), the Minister, the Commissioner of Police or the Comptroller may institute a proceeding in the Court, on behalf of the Commonwealth, for an order that a person pay a pecuniary penalty to the Commonwealth in respect of—

- (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 sub-section (1), the Court is satisfied that the person in relation to whom the order is sought—

- (a) has engaged in a particular prescribed narcotics dealing; or
- (b) has, during a particular period, engaged in prescribed narcotics dealings,

the Court shall assess, in accordance with section 243C, the value of the benefits derived by the person by reason of his having engaged in that dealing, or in prescribed narcotics dealings during that period, as the case may be, and order the person to pay to the Commonwealth a pecuniary penalty equal to the value as so assessed.

(3) The Court may order a person to pay a pecuniary penalty under sub-section (2) in relation to a particular prescribed narcotics dealing, or prescribed narcotics dealings during a particular period, whether or not the

person has been convicted of an offence, or proceedings have been instituted in respect of any offence, committed in relation to that dealing or any of those dealings and whether or not any moneys or other goods have been seized under section 229A in relation to that dealing or any of those dealings.

(4) An amount payable by a person to the Commonwealth in accordance with an order made under sub-section (2) shall, for all purposes, be deemed to be a civil debt due by the person to the Commonwealth.

(5) An order made by the Court under sub-section (2) may be enforced as if it were an order made by the Court in civil proceedings instituted by the Commonwealth against the person to recover a debt due by the person to the Commonwealth.

(6) This section applies to and in relation to moneys that come, or other property that comes, into the possession or under the control of a person either within or outside Australia, and to benefits that are provided for a person either within or outside Australia.

(7) A proceeding under sub-section (1) may be commenced—

- (a) if the proceeding relates to a particular prescribed narcotics dealing engaged in by a person after the commencement of this section—within 6 years after that dealing took place; or
- (b) if the proceeding relates to prescribed narcotics dealings during a particular period, being a period that commenced after the commencement of this section—within 6 years after the end of that period.

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

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- (ii) another person at the request or by the direction of the defendant,
by reason of the defendant's having engaged in that dealing or in prescribed narcotics dealings during that period;
- (c) in the case of a prescribed narcotics dealing that consisted of selling or otherwise dealing in narcotic goods—the market value, at the time of the dealing, of similar or substantially similar narcotic goods;
- (d) in the case of a prescribed narcotics dealing that consisted of the doing of any act or thing other than selling or otherwise dealing in narcotic goods—the amount that was, or the range of amounts that were, at the time the dealing occurred, ordinarily paid for the doing of a similar or substantially similar act or thing; and
- (e) the value of the defendant's property before and after he engaged in that dealing, or before and after the end of that period, as the case may be.

(3) Where evidence is given in a proceeding under section 243B that the value of the defendant's property after he engaged in a particular prescribed narcotics dealing, or after the end of a particular period during which he engaged in prescribed narcotics dealings, exceeded the value of the defendant's property before he engaged in that dealing, or before the commencement of that period, then, for the purposes of sub-section (2) of that section, the Court shall, subject to sub-section (4), treat the value of benefits derived by the defendant by 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 excess.

(4) Where, after evidence has been given in a proceeding under section 243B that the value of the defendant's property after he engaged in a particular prescribed narcotics dealing, or after the end of a particular period, exceeded the value of the defendant's property before he engaged in that dealing, or before the commencement of that period, the defendant satisfies the Court that the whole or a part of the excess was due to certain causes, being causes unrelated to his having engaged in that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be—

- (a) if the defendant so satisfies the Court in respect of the whole of the excess—sub-section (3) does not apply to the excess; or
- (b) if the defendant so satisfies the Court in respect of a part of the excess—sub-section (3) applies to and in relation to the excess as if it were reduced by the amount of that part.

(5) In a proceeding under section 243B, a member of the Australian Federal Police or an officer of Customs who is experienced in the investigation of narcotics offences may testify—

- (a) with respect to the amount that, to the best of his information, knowledge and belief, was the market value of narcotic goods at a particular time or during a particular period; or

- (b) with respect to the amount, or the range of amounts, that, to the best of his information, knowledge and belief, was the amount, or range of amounts, ordinarily paid at a particular time or during a particular period for the doing of an act or thing (not being the selling or other dealing in narcotic goods) comprising a prescribed narcotics dealing,

notwithstanding any rule of law or practice relating to hearsay evidence, and his testimony is *prima facie* evidence of the matters testified to.

(6) In calculating, for the purposes of a proceeding under section 243B, the value of benefits derived by the defendant by reason of his having engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, any expenses or outgoings of the defendant in connection with that dealing, or those dealings, shall be disregarded.

Presumption of illegality of importation

243D. Where, in a proceeding under section 243B against a person, the Court is satisfied that the narcotic goods in relation to which the person is alleged to have engaged in a prescribed narcotics dealing or in prescribed narcotics dealings are goods reasonably suspected of having been imported into Australia in contravention of this Act, the Court shall, for the purposes of the proceeding, treat the narcotic goods as narcotic goods which have been imported into Australia in contravention of this Act unless it is established to the satisfaction of the Court that the narcotic goods were not imported into Australia or were not imported into Australia in contravention of this Act.

Court may direct the Official Trustee to take control of property

243E. (1) Where the Minister, the Commissioner of Police or the Comptroller has instituted a proceeding under section 243B for an order that a person (in this section referred to as the "defendant") pay a pecuniary penalty in relation to a particular prescribed narcotics dealing, or in relation to prescribed narcotics dealings during a particular period, the Minister, the Commissioner of Police or the Comptroller may make application to the Court, *ex parte*, for an order directing the Official Trustee to take control of property specified in the application or of all the property of the defendant.

(2) Where—

(a) an application under sub-section (1) is supported by—

(i) an affidavit of a member of the Australian Federal Police or an officer of Customs stating that he believes that—

(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,

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and setting out the grounds on which he holds those beliefs; and

- (ii) if the application seeks an order directing the Official Trustee to take control of specified property—an affidavit of a member of the Australian Federal Police or an officer of Customs stating that he believes that the property is the property of the defendant and setting out the grounds on which he holds that belief; and

- (b) the Court considers that, having regard to the matters contained in that affidavit or those affidavits, there are reasonable grounds for holding those beliefs,

the Court—

- (c) shall make an order directing the Official Trustee to take control—

- (i) if the application seeks an order with respect to specified property—of all that property or such part of that property as the Court thinks fit; or

- (ii) in any other case—of all the property of the defendant; and

- (d) may, subject to sub-section (3), include in the order such provision (if any) in relation to the operation of the order as the Court thinks fit.

(3) Paragraph (2) (d) does not authorize the Court to include in an order directing the Official Trustee to take control of property a provision postponing the operation of the order.

(4) Without limiting the power of the Court under paragraph (2) (d), an order directing the Official Trustee to take control of 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.

(5) The Court may refuse to make an order under sub-section (2) directing the Official Trustee to take control of property if the Commonwealth refuses or fails to give to the Court such undertakings as the Court deems appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

(6) For the purposes of an application under sub-section (1), the Minister, the Commissioner of Police or the Comptroller may, on behalf of the Commonwealth, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

(7) Notwithstanding anything contained in the *Bankruptcy Act 1966*, moneys that have come into the possession, or under the control, of the Official Trustee in accordance with an order made under sub-section (2) shall not be

paid into the Common Investment Fund established in pursuance of section 20B of that Act.

Court may make further orders

243F. (1) Where the Court makes, or has made, an order (in this section referred to as the "original order") under sub-section 243E (1) directing the Official Trustee to take control of specified property, or all of the property, of a person (in this section referred to as the "defendant"), the Court may, at the time it makes the original order or at any subsequent time, make such orders in relation to that property as the Court considers just and, without limiting the power so conferred on the Court, the Court may, at any time or from time to time, make an order—

- (a) varying the original order in respect of the property to which it relates or any provision included in the original order by virtue of paragraph 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 defendant, and the exercise of the powers, or the performance of the duties, of the Official Trustee, with respect to the property to which the original order relates;
- (d) directing the defendant to furnish to the Official Trustee, within a time specified in the order, a statement, verified by the oath or affirmation of the defendant, setting out such particulars of the property of the defendant as the Court deems proper;
- (e) for the examination of the defendant or another person before the Court or the Registry of the Court concerning the nature and location of the property of the defendant; or
- (f) with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the Commonwealth in connection with the making of the original order.

(2) An application for an order under sub-section (1) may be made—

- (a) by the Official Trustee;
- (b) by the Minister, the Commissioner of Police or the Comptroller;
- (c) by the defendant; or
- (d) with the leave of the Court, by any other person.

(3) Where the defendant or another person is examined before the Court or the Registrar of the Court in pursuance of an order under sub-section (1), a statement or disclosure made by him in answer to a question put to him in the course of the examination is not admissible against him in any civil or criminal proceedings except—

- (a) in a proceeding for giving false testimony in the course of the examination; or

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- (b) in a proceeding for the recovery of a pecuniary penalty for the purpose only of facilitating the assessment of the amount of the pecuniary penalty.
- (4) In this section, unless the contrary intention appears—
 - (a) references to the original order shall be read as including references to the original order as varied under this section; and
 - (b) references to the Registrar of the Court shall be read as including references to a Deputy Registrar of the Court, a District Registrar of the Court and a Deputy District Registrar of the Court.

Official Trustee to discharge pecuniary penalty

243G. (1) Where an order (in this section referred to as the "first order") is in force under section 243E directing the Official Trustee to take control of specified property, or of all of the property, of a person who has been ordered to pay a pecuniary penalty to the Commonwealth, the Court may, on application made by the Minister, the Commissioner of Police or Comptroller, make an order (in this section referred to as the "second order") directing the Official Trustee to pay to the Commonwealth, out of the property of the person that has come into its possession or under its control by virtue of the first order, an amount equal to the amount of the liability of the person in respect of that pecuniary penalty.

(2) For the purpose of enabling the Official Trustee to comply with the direction contained in the second order, the Court may, by the second order or by a subsequent order, direct the Official Trustee to sell or dispose of such of the property that is subject to the charge that was created by sub-section 243J (1) upon the making of the first order as is specified in the second order or in the subsequent order, as the case may be.

(3) As soon as practicable after the making of the second order, the Official Trustee—

- (a) shall apply the moneys which have come into its possession or under its control by reason of the sale or disposition of any of the property specified in the second order, or the subsequent order, or otherwise in the course of performing its duties in respect of the property to which the first order relates, in payment of the fees payable in connection with, and the expenses incurred by it in or in connection with, its performance of the duties imposed on it under the first order, including the expenses incurred by it in or in connection with the sale or disposition of any of the property to which the first order relates; and
- (b) shall, subject to sub-section (4), pay the remainder of the moneys referred to in paragraph (a), after the payments referred to in that paragraph have been made, to the Commonwealth.

(4) Where the moneys to which paragraph (3) (b) applies exceed the liability of the person in respect of the pecuniary penalty payable by him to the Commonwealth, the Official Trustee shall—

- (a) pay to the Commonwealth, out of those moneys, an amount equal to the amount of that liability; and
- (b) pay the balance of those moneys to the person.

(5) Where the Official Trustee pays, in accordance with the second order, moneys to the Commonwealth in respect of the liability of a person to pay a pecuniary penalty to the Commonwealth, the liability of the person in respect of the pecuniary penalty shall, to the extent of the payment, be deemed to be discharged.

Revocation of order under section 243E

243H. (1) Where, after an order under section 243E has been made in relation to a proceeding for the recovery of a pecuniary penalty—

- (a) no pecuniary penalty is imposed upon the determination of that proceeding;
 - (b) the pecuniary penalty imposed upon the determination of that proceeding is paid; or
 - (c) the Court is satisfied that it is, in all the circumstances, proper to do so,
- the Court may, upon application being made to it by a person authorized to make an application under section 243F, revoke that order.

(2) The revocation of an order under section 243E that was made in relation to a proceeding for the recovery of a pecuniary penalty does not prevent the Court from making a further order under section 243E in relation to that proceeding.

(3) Without limiting the powers of the Court to make an order under sub-section (1), the Court may revoke an order under section 243E upon the applicant—

- (a) giving security satisfactory to the Court for the payment of any pecuniary penalty that may be imposed on him in the relevant proceeding; or
- (b) giving undertakings satisfactory to the Court concerning the property of the applicant.

(4) Where the Court revokes or has revoked, an order under section 243E, the Court may make such order or orders as it deems proper for or in relation to the discharge of the Official Trustee concerned from all liability in respect of the exercise by it of the powers conferred on it, and the performance by it of the duties imposed on it, under this Division in respect of the property of the person to whom the order under section 243E related.

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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, an order under section 243E directing the Official Trustee to take control of specified property, or of all of the property, of the person, upon the making of the order, there is created, by force of this section, a charge, on all the property to which the order relates, to secure the payment to the Commonwealth of any pecuniary penalty that the person may be ordered to pay in the relevant proceeding.

(2) Where a charge is created by sub-section (1) on any property of a person upon the making of an order under section 243E, the charge ceases to have effect in respect of the property—

- (a) upon the order ceasing to apply to the property by reason of the variation or revocation of the order;
- (b) upon the determination of the relevant proceeding by way of the refusal of the Court to make an order for the payment of a pecuniary penalty by the person;
- (c) upon payment by the person of any pecuniary penalty that he has been ordered to pay in the relevant proceeding;
- (d) upon the person becoming a bankrupt;
- (e) upon the sale or other disposition of the property—
 - (i) in pursuance of an order made by the Court under section 243G; or
 - (ii) by the owner of the property with the consent of the Court or of the Official Trustee; or
- (f) upon the sale of the property to a *bona fide* purchaser for value who, at the time of purchase, has no notice of the charge,

whichever first occurs.

(3) The charge created on property by sub-section (1) by reason of the making of an order directing the Official Trustee to take control of the property—

- (a) is subject to every charge or encumbrance to which the property was subject immediately before the order was made;
- (b) has priority over all other encumbrances whatsoever; and
- (c) subject to sub-section (2), is not affected by any change of ownership of the property.

(4) Where a charge is created by sub-section (1) on property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind, the Official Trustee may cause the charge so created to be registered under the provisions of that law and, if the Official Trustee does so, a person who purchases or otherwise acquires the property after the registration of the

charge shall, for the purposes of sub-section (2), be deemed to have notice of the charge.

Penalty for selling, &c., property subject to the control of official receiver

243K. A person shall not, without the consent of the Court or of the Official Trustee, sell, or otherwise dispose of, or purport to sell or otherwise dispose of, any property that is, to his knowledge, subject to a charge under section 243J.

Penalty: \$2,000 or imprisonment for 2 years, or both.

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 an order under section 243G in relation to the liability of the person to pay a pecuniary penalty; and
- (b) the person subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition,

the Commonwealth shall pay to the trustee in the bankruptcy an amount equal to the amount paid to the Commonwealth in accordance with the order, less the taxed costs of the Minister, the Commissioner of Police or Comptroller in respect of the making of the order under section 243G.

(2) Where the Commonwealth has paid to the trustee in bankruptcy an amount in accordance with sub-section (1), the Commonwealth may prove in the bankruptcy for its debt as an unsecured creditor as if the order under section 243C had not been made.

(3) Notwithstanding anything contained in the *Bankruptcy Act 1966*, a person who purchases in good faith, property of a person who, after the purchase, becomes a bankrupt, under a sale of the property in pursuance of a direction given under section 243G acquires a good title to it as against the trustee in the bankruptcy.

Duties of the Official Trustee after receiving notice of presentation of creditor's petition, &c.

243M. (1) Where, after the Official Trustee has been directed by an order under sub-section (1) of section 243G to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the presentation of a creditor's petition against the person is given to the Official Trustee, the Official Trustee—

- (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

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(b) shall not pay to the Commonwealth any moneys in pursuance of the direction to do so contained in the first-mentioned order, until the petition has been dealt with by a bankruptcy court or has lapsed.

(2) Where, after the Official Trustee has been directed by an order under sub-section (1) of section 243G to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the reference to a bankruptcy court of a debtor's petition against the person is given to the Official Trustee, the Official Trustee—

(a) shall refrain from taking action to sell property of the person in pursuance of any direction to do so contained in an order under that section; and

(b) shall not pay to the Commonwealth any moneys in pursuance of the direction to do so contained in the first-mentioned order, until a bankruptcy court has dealt with the petition.

(3) Where a person who is liable to pay a pecuniary penalty becomes a bankrupt (whether on a creditor's petition or otherwise), any property of the person in the possession, or under the control, of the Official Trustee in accordance with an order made under this Division shall be deemed to be in the possession, or under the control, of the Official Trustee as, or on behalf of, the trustee of the estate of the bankrupt, and not otherwise.

(4) In this section, "bankruptcy court" means a court having jurisdiction in bankruptcy under the *Bankruptcy Act 1966*.

Protection of official receiver from personal liability in certain cases

243N. (1) Where—

(a) the Court has made an order under section 243E directing the Official Trustee to take control of all the property of a person;

(b) the Official Trustee has taken control of any property in the possession, or on the premises, of the person without notice of any claim by another person in respect of that property; and

(c) the person did not, at the date of the order, have any beneficial interest in the property referred to in paragraph (b),

the Official Trustee is not personally liable for any loss or damage arising from its having taken control of the property sustained by a person claiming the property or an interest in the property, or for the cost of proceedings taken to establish a claim to the property or to an interest in the property, unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of control of the property.

(2) Where the Official Trustee has, in accordance with an order under section 243E, taken control of property of a person specified in the order, the Official Trustee is not personally liable for any loss or damage arising from its having taken control of the property (being loss or damage sustained by some other person claiming the property or an interest in the property), or for the

cost of proceedings taken to establish a claim to the property, or to an interest in the property, unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of control of the property.

(3) The Official Trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of the Commonwealth or of a State or Territory upon or in respect of property of which it has been directed by an order under section 243E to take control, being rates, land tax or municipal or other statutory charges that fall due on or after the date of that order, except to the extent, if any, of the rents and profits received by the Official Trustee in respect of that property on or after the date of that order.

(4) Where the Official Trustee who has been directed by an order under section 243E to take control of a business carried on by a person carries on that business, the Official Trustee is not personally liable for any payment in respect of long service leave for which the person was liable or for any payment in respect of long service leave to which a person employed by the Official Trustee in its capacity of manager of the business, or the legal personal representative of such a person, becomes entitled after the date of that order.

(5) In this section, "interest", in relation to property, means—

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege over, or in connection with, the property.

Fees payable to official receiver

243P. Where the Official Trustee takes control of property by virtue of an order of the Court under section 243E, the Official Trustee is entitled to receive fees, in respect of the exercise of its powers and the performance of its duties in relation to the property, equal to the fees that it would be entitled to receive if it were exercising the powers or performing the duties in consequence of its having taken control of the property by virtue of a direction given under section 50 of the *Bankruptcy Act 1966*.

Notices

243Q. Where the Court makes an order under section 243E or 243F in relation to property, the Official Trustee shall give or publish such notices (if any) of, or in respect of, the order as are required by the regulations or as the Court directs.

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

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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.

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 in the name of the Comptroller by action, information or other appropriate proceeding—

- (a) in the Supreme Court of a State;
- (b) in the Supreme Court of the Australian Capital Territory;
- (c) in the Supreme Court of the Northern Territory;
- (d) in a County Court or District of a State; or

(e) in a Local Court, being a Local Court of full jurisdiction, of South Australia or of the Northern Territory.

(2) Where 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.

(3) Customs prosecutions may be instituted in the name of a Collector by action, information or other appropriate proceeding in a court of summary jurisdiction of a State, of the Australian Capital Territory or of the Northern Territory.

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

Evidence of authority to institute proceedings

245A. (1) Where any Customs prosecution has been instituted by an officer in the name of the Collector, the prosecution shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Collector.

(2) The production of a telegram purporting to be signed by the Collector, and purporting to authorize an officer to institute any Customs prosecution or proceedings, shall be admissible in evidence in the prosecution or proceedings and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceedings in the name of the Collector.

Prosecutions in accordance with practice rules

247. Every Customs prosecution in a court referred to in sub-section 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 of 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 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 matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(3) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4) The foregoing provisions of this section shall not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

Proof of proclamation, &c.

256. The production of the *Gazette* containing any proclamation, gazette notice or regulation appearing to have been issued or made under this Act or the production of any document certified by the Comptroller or the Collector of Customs for a State or Territory to be a true copy of, or extract from any such proclamation, gazette notice, or regulation issued or made under this Act shall be *prima facie* evidence of the issue or making of such proclamation, gazette notice, or regulation, and that the same is in force.

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.

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Conviction to operate as a condemnation

262. Where the committal of any offence causes a forfeiture of any goods the conviction of any person for such offence shall have effect as a condemnation of the goods in respect of which the offence is committed.

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 Minister may direct.

(2) This section does not apply to—

- (a) penalties recovered in proceedings under sub-section 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 IMPORT GOODS 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;

“year” means a period of 12 months.

(2) Where, during a year, a person first enters for home consumption goods that were imported into Australia by him before the commencement of that year, he shall, for the purposes of this Part, be deemed to have imported those goods into Australia during that year and not during any other year.

Tender schemes

266. (1) The Minister may, by instrument in writing, formulate a scheme for calling, and dealing with, tenders for the right to import a determined quantity of particular goods, or particular goods of a determined value, during a year at concessional rates of duty.

(2) A call for tenders that relates to determined quantities of particular goods shall include a statement that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the particular goods the subject of the call, the value of the goods is to be calculated by reference to a value set out in the statement as the value of an appropriate unit of the goods.

(3) In determining the value of an appropriate unit of particular goods to be set out in a statement referred to in sub-section (2), the Minister shall have regard to the average value of the corresponding unit in relation to goods of the same kind that were imported into Australia and entered for home consumption during the financial year that ended on the 30 June immediately preceding the date on which the call for tenders is made.

(4) A call for tenders shall include a statement that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the particular goods the subject of the call, the prescribed percentage of the value of the goods is to be the percentage set out in the statement.

Undertakings relating to tenders

267. (1) Where, in accordance with a call for tenders made under a scheme, a person furnishes a tender for the right to import during a year a quantity to be determined in accordance with his tender of particular goods, or particular goods of a value to be determined in accordance with his tender, at rates of duty to be determined in accordance with his tender, that tender shall not be considered unless it is accompanied by an undertaking in writing by that person, in terms satisfactory to the Minister, that, if his tender is accepted and—

- (a) the *Customs Tariff Act 1966*⁶ is so altered or proposed to be so altered that rates of duty determined in accordance with his tender are set out in items, or proposed items, of a Customs Tariff that are expressed to apply to goods as prescribed by by-law; and
- (b) the Minister makes a determination under section 273 by virtue of which those items or proposed items apply to the quantity determined in accordance with his tender of those goods, or the quantity of those goods having the value determined in accordance with his tender, to be imported by that person during that year,

he will, during that year, import into Australia that quantity of those goods, or the quantity of those goods having that value, and enter for home consumption, under any of those items, or proposed items, or under any appropriate item, or

proposed item, of a Customs Tariff that is not expressed to apply to goods as prescribed by by-law, the goods so imported.

(2) An undertaking referred to in sub-section (1) that relates to a determined quantity of goods shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the value of those goods is to be calculated by reference to the value per unit of those goods as set out in the statement, being the value per unit set out in the statement included by the Minister, in accordance with sub-section (2) of section 266, in the relevant call for tenders.

(3) An undertaking referred to in sub-section (1) shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the prescribed percentage of the value of the goods is to be the percentage set out in the statement, being the percentage set out in the statement included by the Minister, in accordance with sub-section 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 import goods at concessional rates of duty

268. (1) A scheme may provide for the transfer, with the approval of the Minister, from one person to another of a right to import a specified quantity of particular goods, or particular goods of a specified value, during a year at concessional rates of duty.

(2) The Minister shall not give an approval to a transfer under a scheme of a right to import a specified quantity of particular goods, or particular goods of a specified value, unless the transferee—

- (a) gives an undertaking, in writing, in terms satisfactory to the Minister, 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 imported by the transferee in the exercise of the right, the transferee will, in the exercise of that right, import into Australia that quantity of those goods, or the quantity of those goods having that value, and enter them for home consumption under any of those items of proposed items or under any appropriate item, or proposed item, of a Customs Tariff that is not expressed to apply to goods as prescribed by by-law; and
- (b) if so required by a Collector, gives a security for payment of any penalty in connection with the undertaking that the transferee may

become liable to pay to the Commonwealth under the *Customs Undertakings (Penalties) Act 1981*.

(3) An undertaking referred to in sub-section (2) that relates to a specified quantity of goods shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the value of those goods is to be calculated by reference to the value per unit of those goods as set out in the statement, being a value per unit that was set out in the corresponding statement in the undertaking given by the transferor in relation to those goods.

(4) An undertaking referred to in sub-section (2) shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the prescribed percentage of the value of the goods is to be the percentage set out in the statement, being the percentage set out in the corresponding statement in the undertaking given by the transferor in relation to those goods.

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 Minister, 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—COMMERCIAL TARIFF CONCESSION ORDERS

Interpretation

269B. (1) In this Part, unless the contrary intention appears—

“application” means an application made under section 269G for a concession order;

“concession order” means a Commercial Tariff Concession Order provided for by section 269C;

“days” includes Sundays and holidays;

“particular goods” includes goods included in a particular class or kind of goods;

“prescribed item” means an item in Part I of Schedule 4 to the *Customs Tariff Act 1982* that is expressed to apply to goods that a Commercial Tariff Concession Order declares are goods to which the item applies.

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(2) A reference in this Part to the *Customs Tariff Act 1982* shall be read as including a reference to that Act as proposed to be altered by a Customs Tariff alteration proposed in the Parliament.

(3) For the purposes of this Part, identical goods shall be taken to serve similar functions.

(4) Without limiting sub-section (3), for the purposes of this Part, goods shall be taken to serve similar functions to other goods unless the Minister is satisfied that, if both goods were readily available for sale throughout Australia, there would be no significant part of Australia in which there would be significant cross-elasticity of demand between the goods.

(5) 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 $\frac{1}{4}$ of the factory or works cost of the goods is represented by the sum of—
 - (i) the value of labour of Australia;
 - (ii) the value of materials of Australia; and
 - (iii) the factory overhead expenses incurred in Australia in respect of the goods.

(6) For the purposes of this Part, 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.

(7) For the purposes of this Part, a person shall be taken to be capable of producing goods in the normal course of business if, in the normal course of business, he is prepared to accept orders for the supply of such goods that have been, are being, or are to be, produced by him.

Commercial Tariff Concession Orders

269C. (1) Subject to this Part, where the Minister, after considering an application under section 269G for the making of an order under this section in respect of particular goods, is satisfied that—

- (a) goods serving similar functions to the particular goods are not produced in Australia; and
- (b) goods serving similar functions to the particular goods are not capable of being produced in Australia by any person in the normal course of business,

the Minister shall make a written order, to be known as a Commercial Tariff Concession Order, declaring that the particular goods are goods to which a prescribed item specified in the order applies.

(2) Where, by virtue of a concession order, particular goods are goods to which a particular prescribed item applies, nothing in this Part shall be taken to prevent the making of another concession order that declares, or of other

concession orders that declare, that other prescribed goods are also goods to which that particular item applies.

(3) A reference in paragraph (1) (a) or (b) to "the particular goods" shall, in case of particular goods of which there are classes or kinds, be read as including a reference to goods included in a class or kind of the particular goods.

Concession orders not to apply to prescribed goods

269D. (1) The Minister shall not make a concession order in respect of particular goods that are particular goods, or some of particular goods, declared by the regulations to be goods in respect of which such an order shall not be made (if any).

(2) Without limiting the generality of sub-section (1), a declaration by regulations for the purposes of that sub-section may be a declaration by reference to goods to which a particular item, sub-item, paragraph or sub-paragraph in Schedule 3 to the *Customs Tariff Act 1982* applies at a particular time.

Minister may refuse to make certain concession orders

269E. (1) The Minister may, in his discretion, refuse to make a concession order in respect of particular goods if, in his opinion, the making of the order—

- (a) would be likely to have a substantially adverse effect on the market for any goods produced in Australia; or
- (b) would not be in the national interest.

(2) The Minister, in considering for the purposes of paragraph (1) (b) whether the making of a concession order in respect of particular goods would not be in the national interest, shall have regard to the matters to which the Industries Assistance Commission is required to have regard under sub-sections 22 (1) (other than paragraph (g)) and (2) of the *Industries Assistance Commission Act 1973* and may have regard to any other matters (whether or not of the same kind as the first-mentioned matters) that he considers relevant.

(3) Where the Minister refuses to make a concession order in respect of particular goods by reason of the operation of paragraph (1) (b), he shall publish in the *Gazette* a notice—

- (a) stating that he has refused to make a concession order for which an application has been made;
- (b) specifying the particular goods;
- (c) stating that he has refused to make the order by reason that, in his opinion, the making of the order would not be in the national interest; and
- (d) setting out his reasons for that opinion.

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Concession orders not to contravene international agreements

269F. Where the Minister 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 by reference to which the duty in respect of particular goods (which may be particular goods that are not the produce or manufacture of a particular country) is to be ascertained is not to be less than a particular minimum rate, the Minister shall not make a concession order that would result in a contravention of those obligations.

Applications for concession orders

269G. (1) A person may make an application in writing to the Minister for a concession order in respect of particular goods specified in the application.

(2) An application—

(a) shall contain such particulars as are prescribed; and

(b) shall be lodged with the Comptroller—

(i) in a prescribed manner;

(ii) on a day other than a Sunday, a Saturday or a prescribed holiday; and

(iii) at a time that is between prescribed hours.

(3) Except where an application is lodged in such a prescribed manner that the date on which it is lodged is automatically recorded, the Comptroller shall, in a prescribed manner, give the applicant an acknowledgment, in writing, of the lodging of the application specifying the date on which it was lodged.

(4) Where—

(a) an application is lodged on a day immediately following a day, or 2 or more consecutive days, on which applications may not be lodged; and

(b) the application states that, if it had been permissible to do so, the application would have been lodged on that earlier day or on such of those earlier days as is specified in the application,

the application shall, for the purposes of sub-section (5), be deemed to have been lodged with the Comptroller on the earlier day or on the specified earlier day, as the case may be.

(5) An application shall, for the purposes of this Part, be taken to have been made on the date on which it was lodged with the Comptroller.

Notice of applications

269H. (1) A person may give to the Comptroller a notice in writing that he proposes to make an application for a concession order in respect of particular goods specified in the notice.

(2) A notice under sub-section (1)—

(a) shall contain such particulars as are prescribed; and

(b) shall be given to the Comptroller—

(i) in a prescribed manner; and

(ii) on a day on which, and at a time at which, applications may be lodged.

(3) Except where a notice under sub-section (1) is given in such a prescribed manner that the date on which it is given is automatically recorded, the Comptroller shall, in a prescribed manner, give the person who gave the notice an acknowledgment, in writing, of the giving of the notice specifying the date on which it was given.

(4) Where—

(a) a notice under sub-section (1) is given on a day immediately following a day, or 2 or more consecutive days, on which such notices may not be given; and

(b) the notice states that, if it had been permissible to do so, the notice would have been given on that earlier day or on such of those earlier days as is specified in the notice,

the notice shall, for the purposes of sub-section 269N (3), be deemed to have been given on the earlier day or on the specified earlier day, as the case may be.

Applications deemed to be made

269J. (1) Where the Industries Assistance Commission or the Temporary Assistance Authority makes a report to the Minister in accordance with the *Industries Assistance Commission Act 1973* (other than a report resulting from a request under sub-section 269R (1)) that contains a recommendation that a concession order should be made in respect of particular goods, an application under section 269G for a concession order in respect of those particular goods shall be deemed to have been made on a date that the Minister considers to be appropriate.

(2) Where the Minister declares, in writing, that he is of the opinion that it is desirable that consideration should be given to the making of a concession order in respect of particular goods, an application under section 269G for a concession order in respect of those goods shall be deemed to have been made on the date on which he makes the declaration.

Refusal of applications

269K. (1) Where the Minister decides not to make a concession order for which an application, other than an application deemed to have been made under sub-section 269J (1) or (2), has been made (whether or not a notice referred to in section 269L in relation to the application has been published), he shall, in a prescribed manner, give the applicant notice, in writing, of the decision.

(2) The giving of a notice under sub-section (1) in respect of a concession order does not prevent the Minister giving further consideration to the

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application or applications for that concession order or reversing the decision by reason of which the notice was given.

Orders not to be made without notice of application, &c.

269L. The Minister shall not make a concession order (not being an order dealt with in a report by the Industries Assistance Commission or the Temporary Assistance Authority or an order under sub-section 269P (10)) unless he has—

- (a) published in the *Gazette* a notice—
 - (i) stating that an application for the order has been made;
 - (ii) specifying the particular goods to which the application relates; and
 - (iii) inviting any persons who consider that there are reasons why the order should not be made to submit, in a manner specified in the notice, particulars, in writing, of these reasons to the Comptroller within 28 days after the date of the publication of the notice; and
- (b) considered any relevant particulars submitted in response to the invitation referred to in sub-paragraph (a) (iii).

Publication of concession orders

269M. (1) A concession order shall be published in the *Gazette* as soon as practicable after it is made.

(2) Any failure to comply with the requirements of sub-section (1) in relation to a concession order shall not be taken to affect the validity of the concession order.

Application of concession orders

269N. (1) A concession order (not being an order made under sub-section 269P (10)) in respect of particular goods shall be deemed to have come into effect on such date before the making of the order as is specified in the order.

(2) Subject to sub-section 269P (7) and (8), a concession order applies in relation to the particular goods to which it relates that are first entered for home consumption on or after the date on which it comes into effect.

(3) Subject to sub-sections (4), (6) and (7), the date to be specified in a concession order for the purposes of sub-section (1) shall be—

- (a) where, within the period of 28 days immediately preceding the date on which the application for the order was made the person who made the application gave notice under section 269H of his intention to make the application—the date on which he gave that notice; or
- (b) in any other case—the date on which the application for the order was made.

(4) Subject to sub-sections (6) and (7), where, in relation to a concession order in respect of particular goods, the Minister is satisfied (whether by reason of an application under sub-section (5) or otherwise) that the applicant for the order delayed taking steps to obtain a concession order in relation to those goods by reason of an officer having done, or having failed to do, any act or thing, the date to be specified in the order for the purposes of sub-section (1) shall be the date that the Minister considers would have been the date that would have been specified if the delay had not occurred.

(5) An applicant for a concession order may, in the application for the order, apply to the Minister to consider whether he should perform his duty under sub-section (4) in relation to the order, setting out particulars in support of his application under this sub-section.

(6) Subject to sub-section (7), where—

- (a) the Minister proposes to make a concession order; and
- (b) there are 2 or more applications for the order,

the date to be specified in the order for the purposes of sub-section (1) shall be the earliest date that, in accordance with sub-section (3) or (4), would have been required to be so specified by reason of an application referred to in paragraph (b).

(7) Where—

- (a) a concession order relates to particular goods to which an earlier concession order that has been revoked under sub-section 269P (1) also related; and
- (b) the Minister is satisfied that the earlier order should not have been revoked,

the date to be specified in the order for the purposes of sub-section (1) shall be the date on which the revocation of the earlier order came into effect.

Revocation of concession orders

269P. (1) Where the Minister becomes satisfied at any time during which a concession order in respect of particular goods is in force that, if—

- (a) that order were not in force at that time; and
- (b) an application were to be made at that time for a concession order in respect of the particular goods,

a concession order, or a concession order specifying the item that is specified in the first-mentioned concession order, would not be made in respect of the particular goods (whether by reason that the order would relate to all the particular goods, to goods included in a class of the particular goods or otherwise), the Minister may, in his discretion, by order in writing revoke the first-mentioned concession order.

(2) The circumstances in which the Minister may exercise his discretion under sub-section (1) not to revoke a concession order include, but are not

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limited to, the case where he considers that the revocation of the concession order would give an unfair advantage to any person.

(3) A revocation under sub-section (1) comes into effect on the date on which the order of revocation is made.

(4) Where a concession order is revoked under sub-section (1), a notice of the revocation shall be published in the *Gazette* as soon as is practicable after the making of the order of revocation.

(5) Any failure to comply with the requirements of sub-section (4) in relation to the revocation of a concession order shall not be taken to affect the validity of the revocation.

(6) Where a declaration by regulations for the purposes of sub-section 269D (1) is made that applies to particular goods to which a concession order relates (whether all the particular goods, goods in a class of the particular goods or otherwise), that concession order shall be taken to be revoked and that revocation comes into effect on the date on which those regulations came into effect.

(7) Subject to sub-section (8), where a concession order is revoked under sub-section (1) or by virtue of sub-section (6), the concession order ceases to apply in relation to particular goods entered for home consumption on or after the date on which the revocation comes into effect.

(8) Notwithstanding the revocation under sub-section (1) or by virtue of sub-section (6) of a concession order in respect of particular goods, the concession order continues to apply in relation to—

(a) particular goods that—

- (i) were imported into Australia on or before the date on which the revocation came into effect; and
- (ii) are entered for home consumption, before, on, or within 28 days after, that date; and

(b) particular goods that—

- (i) were in transit to Australia on that date; and
- (ii) are entered for home consumption before, on, or within 28 days after, the date on which they were imported into Australia.

(9) For the purposes of sub-paragraph (8) (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.

(10) Where—

- (a) a concession order in respect of particular goods is revoked under sub-section (1) or by virtue of sub-section (6); and
- (b) the Minister is satisfied that the order was revoked by reason that it related to some of those prescribed goods (whether goods included in a

class of those particular goods or otherwise) but would not have been revoked if it had related only to the remainder of those particular goods,

the Minister shall make a written order declaring that particular goods, being that remainder of the first-mentioned particular goods, are goods to which the item that was specified in the revoked concession order applies, and the order so made shall be deemed to be a concession order that came into effect on the date on which the revocation of the revoked concession order came into effect, which date shall be specified in the order under this sub-section.

Concession orders not to be Statutory Rules

269Q. An order under this Part shall not be deemed to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*.

Matters may be referred to Industries Assistance Commission

269R. (1) Where the Minister—

- (a) makes a concession order (not being an order under sub-section 269P (10)); or
- (b) decides not to make a concession order for which an application has been made (not being an application deemed to have been made under sub-section 269J (1) or (2)), otherwise than by reason of the operation of paragraph 269E (1) (b),

a person whose interests are affected by the making of the order, or the decision not to make the order, as the case may be, may request the Minister, in writing, to refer to the Industries Assistance Commission the question whether the order should have been made.

(2) Where the Minister revokes a concession order under sub-section 269P (1), a person whose interests are affected by the revocation may request the Minister, in writing, to refer to the Industries Assistance Commission the question whether the concession order should have been revoked.

(3) Nothing in this Part or in the *Industries Assistance Commission Act 1973* shall be taken to require the Minister to—

- (a) comply with any request made under this section to refer any question to the Industries Assistance Commission; or
- (b) act in accordance with any report made to him by the Industries Assistance Commission as the result of the referral under this section of any question.

Factory and works cost

269S. (1) For the purposes of this Part, the Minister 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

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(b) direct that the value of labour of Australia, the value of materials of Australia or the factory overhead expenses incurred in Australia in respect of goods is to be determined in a specified manner, and those directions shall have effect accordingly.

(2) The provisions of section 48 (other than paragraphs (1) (a) and (b) and sub-section (2)), 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to directions given under this section 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.

PART XVb—SPECIAL PROVISIONS RELATING TO ANTI-DUMPING DUTIES

Interpretation

269T. In this Part, “Anti-Dumping Act” means the *Customs Tariff (Anti-Dumping) Act 1975*.

Inquiries in relation to undertakings

269U. (1) Where the Minister is considering, in relation to a consignment of goods of a particular kind—

- (a) whether to give a notice, in accordance with paragraph 8 (2A) (a) of the Anti-Dumping Act, 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 10 (2A) (a) of the Anti-Dumping Act, 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 Minister 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 sub-section (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 sub-section (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 sub-section (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 sub-section (4) shall be taken to prevent a representative of an Australian industry who attends a meeting convened in pursuance of sub-section (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 sub-section (2) may, subject to sub-section (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 sub-section (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 sub-section (2), the officer convening the meeting shall furnish 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 sub-section 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 sub-section (2), by a representative of the Australian industry to the officer convening the meeting in relation to the question being considered by the meeting.

Certain information and submissions to be verified

269V. Where a person who is not an officer provides information, or makes a submission or request, to the Minister (otherwise than in pursuance of section 15 of the *Anti-Dumping Act*) in relation to the exercise of his powers under that Act in relation to goods of a particular kind, the Minister is not required to have regard to the information, submission or request in exercising those powers in relation to goods of that kind unless the information, submission or request is in writing and is verified by statutory declaration or witnessed by a notary public exercising his function in a place outside the Commonwealth and the Territories.

PART XVI—REGULATIONS AND BY-LAWS

Regulations

270.² (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

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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 \$250 in respect of any contravention of any of the regulations.

Minister 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 Minister 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 Minister may specify in a by-law made for the purposes of an item, or a proposed item, of a Customs Tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law—

- (a) the goods, or the class or kind of goods, to which that item or proposed item applies;
- (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 Minister may determine, by instrument in writing, that, subject to the conditions, if any, specified in the determination, an item, or a proposed item, of a Customs Tariff that is expressed to apply to goods, or to a

class or kind of goods, as prescribed by by-law shall apply, or shall be deemed to have applied, to the particular goods specified in the determination.

(2) The Minister may make a determination under the last preceding sub-section for the purposes of an item, or a proposed item, of a Customs Tariff whether or not he has made a by-law for the purposes of that item or proposed item.

(3) Where, under this section, the Minister determines that an item, or a proposed item, of a Customs Tariff shall apply, or shall be deemed to have applied, to goods, that item or proposed item shall, subject to this Part and to the conditions, if any, specified in the determination, apply, or be deemed to have applied, to those goods as if those goods were specified in a by-law made for the purposes of that item or proposed item and in force on the day on which those goods are or were entered for home consumption.

By-laws and determinations for purposes of repealed items

273A. The Minister may make a by-law or determination for the purposes of an item of a Customs Tariff notwithstanding that the item has been repealed before the making of the by-law or determination, but the by-law shall not apply to, and the determination shall not be made in respect of, goods entered for home consumption after the repeal of that item.

Publication of by-laws and notification of 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*.^a

(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

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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 shall be read as including a reference to a sub-item of such an item, a paragraph of such a sub-item and a sub-paragraph of such a paragraph.

PART XVII—MISCELLANEOUS

Briefing of Leader of Opposition on certain matters

273G. The Minister shall, from time to time, and not less frequently than once each year, arrange for the Leader of the Opposition in the House of Representatives to be briefed on matters relating to contraventions of this Act in respect of narcotic substances.

Review of decisions

273GA.² (1) Subject to this section, applications may be made to the Administrative Appeals Tribunal for review of—

- (a) a demand made by a Collector under section 35A;
- (b) a decision of the Comptroller or a Collector for the purposes of Part V;
- (c) a decision by the Minister under section 119 not to grant a Certificate of Clearance;
- (d) a refusal by a Collector under section 126;
- (e) quota orders, and variations of quota orders, made by the Minister under sections 132B and 132C;
- (f) a direction of the Minister under paragraph 151 (8) (a);
- (g) a decision of the Collector under section 151A;
- (h) a specification of the Minister under sub-section 161B (4);
- (ha) a refusal by a Collector to pay a rebate under section 164;
- (j) a direction by the Minister under section 164B;
- (k) a decision of the Minister, the Comptroller, or a Collector for the purposes of Part XI; and
- (m) a decision by the Minister to specify a date in a Commercial Tariff Concession Order by virtue of sub-section 269N (4); and
- (n) a decision by the Minister not to specify a date in a Commercial Tariff Concession Order by virtue of sub-section 269N (4) where an application in relation to the order has been made under sub-section 269N (5).

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(2) Where a dispute referred to in sub-section 167 (1) has arisen and the owner of the goods has, in accordance with that sub-section, paid under protest the sum demanded by the Collector, an application may be made to the Tribunal for review of the 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) Sub-section 119 (3) does not apply where a Certificate of Clearance is granted to the ship or aircraft referred to in that sub-section as a result of a review by the Tribunal.

(4) A person is not entitled to apply for a review under section 132E of a quota order, or a variation of a quota order, if an application may be made to the Tribunal under paragraph (1) (e) in respect of the quota order or the variation, as the case may be.

(5) An application may not be made to the Tribunal under sub-section (2) unless the application is made within the time specified in paragraph 167 (4) (a) or (b), whichever is appropriate.

(6) Where the owner of goods has made an application to the Tribunal under sub-section (2), he is not entitled to bring an action under sub-section 167 (2).

(7) Where, on an application made under sub-section (2), the Tribunal has made a decision reviewing a demand made by the Collector, the proper duty payable in respect of the goods concerned shall be deemed to be—

(a) the sum determined to be the proper duty by, or ascertained to be the proper duty in accordance with—

(i) the decision of the Tribunal; or

(ii) an order of a court on appeal from that decision; or

(b) the sum paid under protest,

whichever is the less.

(8) In this section, "decision" has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Review of decisions under Customs Tariff Act

273H. Applications may be made to the Administrative Appeals Tribunal for review of a direction given by the Minister under section 11 of the *Customs Tariff Act 1982*.

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 parts beyond the seas or in Australia shall when called upon by the Comptroller or the Collector of Customs for a

State or Territory or an officer specially authorized by the Minister or the Comptroller or the Collector of Customs for a State or Territory so to do—

- (a) deliver an account in writing of the quantity of such goods, the marks and numbers thereof, and names of the shippers and consignees, and declare to the truth thereof;
- (b) answer questions relating to such goods.

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 ships' or aircraft's stores laden in parts beyond the seas or in Australia may be boarded and searched by an officer especially authorized as mentioned in the last section in the same manner as other ships or aircraft, and the officer may secure any such goods and for that purpose bring them ashore.

Direction not to move a ship or aircraft from a boarding station

275A.² (1) Where a Collector considers that it is desirable, for the purposes of the Customs, to hold a ship or aircraft at a boarding station, the Collector may, by notice in writing delivered to the master of the ship or the pilot of the aircraft before it leaves the boarding station, direct the master or pilot not to move the ship or aircraft from the boarding station until the master or pilot receives permission, in writing, from a Collector to do so.

(2) A person shall not disobey a direction given to him, and in force, under this section.

Penalty: \$1,000.

(3) Where a direction not to move a ship or aircraft from a boarding station has been given under sub-section (1)—

- (a) the direction ceases to have any force or effect at the expiration of a period of 3 days after the day on which the direction is given; and
- (b) no further direction in respect of the ship or aircraft shall be given while the ship or aircraft remains at the boarding station.

(4) Where a Collector (not being the Comptroller or the Collector of Customs for a State or Territory) gives a direction under sub-section (1) not to move a ship or aircraft from a boarding station, the Collector shall forthwith notify—

- (a) where the boarding station is in the Australian Capital Territory—the Comptroller;
 - (b) where the boarding station is in a State—the Collector of Customs for the State; or
 - (c) where the boarding station is in the Northern Territory—the Collector of Customs for the Northern Territory,
- of the giving of the direction.

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(5) Where—

- (a) a ship or aircraft is held at a boarding station by virtue of a direction given under sub-section (1); and
- (b) the Comptroller or the Collector of Customs for a State or Territory is satisfied that no purpose of the Customs is served by holding the ship or aircraft at the boarding station,

he shall forthwith revoke the direction.

(6) In proceedings for an offence under this section with respect to a direction, a certificate by a person referred to in the last preceding sub-section that he is satisfied that, up to the time the offence is alleged to have been committed—

- (a) the permission referred to in the direction had not been given; and
- (b) the direction had not been revoked,

is evidence of the matters as to which the person has certified that he is satisfied.

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 sub-section (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 III

THE COMMONWEALTH OF AUSTRALIA

Writ of Assistance

His Majesty the King

To all Peace Officers, and to all whom it may concern: Greeting.

WE command you to permit A.B. of an Officer of the Customs of the Commonwealth of Australia, and his assistants, and each and every of them at any time in the day or night to enter in and search any house premises or place and to break open and search the same and any chests trunks or packages in which goods may be or are supposed to be and to seize any goods forfeited to Us and any goods that he the said A.B. has reasonable cause to believe are forfeited to Us, and to take such goods to such place of security as Our Collector of Customs for in Our said Commonwealth shall direct.

And We grant to the said A.B. all powers which are capable of being granted by a Writ of Assistance.

And We command all Peace Officers and all Our loving subjects in Our said Commonwealth of Australia upon sight of this Our Writ, and upon being so required by the said A.B. to be aiding and assisting the said A.B. in the matters aforesaid: Herein fail not at your peril.

And We declare that this Our Writ of Assistance shall remain in force so long as the said A.B. remains an Officer of Customs in Our Commonwealth of Australia whether in his present capacity or not.

Witness (name and description of the Judge testing the writ) at

the day of

One thousand nine hundred and

(SEAL)

By the Court.

SCHEDULE IV

THE COMMONWEALTH OF AUSTRALIA

Customs Warrant

To

You are hereby authorized to enter into, at any time in the day or night, if necessary, and search any house, premises, or place; and to break open the same, and any chests, trunks, or packages in which goods may be or are supposed to be and to seize and take away any forfeited goods or goods which you have reasonable grounds to believe are forfeited, you may find therein, and forthwith to put and secure the same in such place of security as the Collector may direct: And for so doing this shall be your sufficient warrant.

This warrant has force throughout

This warrant shall remain in force for a period of _____ from the date thereof unless revoked before the expiration of that period.

Dated this _____ day of _____ in the year One thousand nine hundred and _____

(CUSTOMS STAMP)

Signature.

SCHEDULE V

THE COMMONWEALTH OF AUSTRALIA

Customs Warrant

To

WHEREAS information in writing has been given on oath to me that goods have been unlawfully imported, exported, undervalued or entered or illegally dealt with or that it is intended to unlawfully import, export, undervalue or enter or illegally deal with goods, (or

Whereas goods have been seized or detained)

You are hereby authorized, in the event of _____ failing to comply immediately with any requirement made in pursuance of section two hundred and fourteen of the *Customs Act 1901-1923*, to enter into, at any time of the day or night, and search, any house premises or place in which any books or documents relating to the goods are or are supposed to be; and to break open any such house premises or place and search any person therein or thereon and any chests trunks or packages therein or thereon; and to take possession of, remove and impound any of those books and documents which are found: And for so doing this shall be your sufficient warrant.

This warrant has force throughout

This warrant shall remain in force for a period of one month from the date thereof unless revoked before the expiration of that period.

Dated this _____ day of _____ 19 _____

(CUSTOMS STAMP)

(Signature)

SCHEDULE VI

Section 4

Column 1 Name of substance	Column 2 Trafficable quantity
	Grams
Acetorphine	2.0
Acetylcodeine	2.0
Acetyldihydrocodeine	2.0
Acetylmethadol	2.0
Allylprodine	2.0
Alphacetylmethadol	10.0
Alphameprodine	0.2
Alphamethadol	0.2
Alphaprodine	25.0
Amphedloral	2.0
3-(2-Aminopropyl) indole	2.0
Amphetamine	2.0
Anileridine	25.0
Barbiturates	50.0
Benzethidine	10.0
Benzylmorphine	5.0
Betacetylmethadol	5.0
Betameprodine	5.0
Betamethadol	5.0
Betaprodine	5.0
Bezitramide	5.0
4-Bromo-2,5-dimethoxyamphetamine	0.5
Bufotenine	2.0
Cannabinoids	2.0
Cannabis	100.0
Cannabis resin	20.0
Chlorphentermine	2.0
Clonitazene	5.0
Cocaine	2.0
Codeine	10.0
Codeine-N-oxide	10.0
Codoxime	10.0
Desomorphine	2.0
Diampromide	5.0
Diethylpropion	5.0
Diethylthiambutene	5.0
N,N-Diethyltryptamine	2.0
Dihydrocodeine	10.0
Dihydromorphine	10.0
Dimenoxadol	10.0
Dimepheptanol	10.0
2,5-Dimethoxy-4-methylamphetamine	2.0
Dimethylthiambutene	20.0
N,N-Dimethyltryptamine	2.0
Dioxaphetyl butyrate	2.0
Diphenoxylate	2.0
Dipipanone	10.0
Ecgonine	10.0
Ethylmethylthiambutene	10.0
Ethylmorphine	2.0
Etonitazene	5.0
Etorphine	5.0
Etixeridine	5.0
Fentanyl	0.005
Furethidine	1.0
Harmaline	2.0
Harmine	2.0
Heroin	2.0
Hydrocodone	2.0

SCHEDULE VI—continued

Column 1 Name of substance	Column 2 Trafficable quantity
	Grams
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
Lysergide	0.002
Mescaline	7.5
Metazocine	7.0
Methodone	2.0
Methaqualone	50.0
Methorphan	2.0
Methylamphetamine	2.0
3,4-Methylenedioxyamphetamine	0.5
Methylidesorphine	2.0
Methyldihydromorphine	2.0
Methylphenidate	2.0
Metopon	2.0
Monoacetylmorphines	2.0
Moramide	2.0
Morpheridine	2.0
Morphine	2.0
Morphine-N-oxide	2.0
Myrophine	20.0
Nicocodine	2.0
Nicodicodine	2.0
Nicomorphine	2.0
Noracymethadol	2.0
Norcodeine	2.0
Norlevorphanol	2.0
Normethadone	5.0
Normorphine	20.0
Norpipanone	10.0
Opium	20.0
Oxycodone	5.0
Oxymorphone	2.0
Pentazocine	20.0
Pethidine	10.0
Phenadoxone	10.0
Phenampromide	10.0
Phenazocine	1.0
Phendimetrazine	5.0
Phenmetrazine	5.0
Phenomorphane	5.0
Phenoperidine	1.0
Pholcodine	5.0
Piminodine	10.0
Pipradrol	1.0
Piritramide	1.0
Proheptazine	1.0
Properidine	25.0
Psilocin	0.1
Psilocybin	0.1
Tetrahydrocannabinols	2.0
Thebacon	2.0
Thebaine	2.0
Trimeperidine	10.0

Customs Act 1901
SCHEDULE VIII

Section 4

Column 1 Name of substance	Column 2 Commercial quantity
	Kilograms
Cannabis	100.0
Cannabis Resin	50.0
Cocaine	2.0
Heroin	1.5
Lysergic Acid	0.002
Lysergide	0.002
Morphine	1.5
Opium	20.0
Tetrahydrocannabinols	5.0

NOTES

1. The *Customs Act 1901* as shown in this reprint comprises Act No. 6, 1901 amended as indicated in the Tables below.

(The citation "*Customs Act 1901*" is provided for by the *Amendments Incorporation Act 1905* and the *Acts Citation Act 1976*.)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Customs Act 1901</i>	6, 1901	3 Oct 1901	4 Oct 1901 (<i>see Gazette</i> 1901, p. 165)	—
<i>Spirits Act 1906</i>	21, 1906	12 Oct 1906	1 Jan 1907 (<i>see Gazette</i> 1907, p. 1)	—
<i>Customs (Inter-State Accounts) Act 1910 (a)</i>	9, 1910	7 Sept 1910	7 Sept 1910	—
<i>Customs Act 1910</i>	36, 1910	1 Dec 1910	1 Dec 1910	—
<i>Customs Act 1914</i>	19, 1914	7 Dec 1914	7 Dec 1914	—
<i>Customs Act 1916</i>	10, 1916	30 May 1916	30 May 1916	—
<i>Customs Act 1920</i>	41, 1920	10 Nov 1920	(b)	—
<i>Customs Act 1922</i>	19, 1922	9 Oct 1922	9 Oct 1922	—
<i>Customs Act 1923</i>	12, 1923	17 Aug 1923	17 Aug 1923	—
<i>Customs Act 1925</i>	22, 1925	26 Sept 1925	26 Sept 1925	—
<i>Customs Act 1930</i>	6, 1930	29 Mar 1930	29 Mar 1930	S. 3
<i>Customs Act 1934</i>	7, 1934	24 July 1934	S. 17: 1 Jan 1935 Remainder: Royal Assent	—
<i>Statute Law Revision Act 1934</i>	45, 1934	6 Aug 1934	6 Aug 1934	—
<i>Customs Act 1935</i>	7, 1935	5 Apr 1935	1 Jan 1935	—
<i>Customs Act 1936</i>	85, 1936	7 Dec 1936	7 Dec 1936	—
<i>Customs Act 1947</i>	54, 1947	13 Nov 1947	15 Nov 1947 (<i>see Gazette</i> 1947, p. 3377)	—
<i>Customs Act 1949</i>	45, 1949	27 Oct 1949	1 Apr 1950 (<i>see Gazette</i> 1950, p. 723)	S. 3 (2)
<i>Customs Act 1950</i>	56, 1950	14 Dec 1950	30 Nov 1950	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision Act 1950</i>	80, 1950	16 Dec 1950	31 Dec 1950	Ss. 16 and 17
<i>Customs Act 1951</i>	56, 1951	11 Dec 1951	11 Dec 1951	S. 7
<i>Customs Act 1952</i>	108, 1952	19 Nov 1952	Ss. 7 and 11: 14 Dec 1956 (see <i>Gazette</i> 1956, p. 3889) Remainder: Royal Assent	Ss. 19 (2) and 20 (2)
<i>Customs Act 1953</i>	47, 1953	26 Oct 1953	23 Nov 1953	—
<i>Customs Act 1954</i>	66, 1954	8 Nov 1954	6 Dec 1954	—
<i>Customs Act 1957</i>	37, 1957	7 June 1957	S. 4: 7 Sept 1957 Remainder: Royal Assent	Ss. 9 (2) and 11 (2)
<i>Customs Act 1959</i>	54, 1959	22 May 1959	Ss. 6-8 and 17: 1 Jan 1960 Ss. 3, 4, 9-11, 13, 15, 20-24 and 29: 1 Sept 1960 (see <i>Gazette</i> 1960, p. 3065) Remainder: Royal Assent	Ss. 5 (2) and 28-30
<i>Customs Act 1960</i>	42, 1960	5 Sept 1960	5 Sept 1960	—
<i>Customs Act (No. 2) 1960</i>	111, 1960	19 Dec 1960	S. 3: 30 Nov 1961 (see <i>Gazette</i> 1961, p. 4309) Remainder: Royal Assent	S. 2 (3)
<i>Customs Act 1963</i>	48, 1963	16 Oct 1963	Ss. 5, 20, 22, 31 and 32: 1 July 1964 (see <i>Gazette</i> 1964, p. 2348) Ss. 14 (1), 15 and 16: 1 Sept 1965 (see <i>Gazette</i> 1965, p. 3767) Remainder: Royal Assent	Ss. 8 (2), 12 (2), 14 (2), 20 (2), 22 (2), 25 (2) and 29 (2)
<i>Customs Act 1965</i>	29, 1965	2 June 1965	1 July 1965	—
<i>Customs Act (No. 2) 1965</i>	82, 1965	30 Nov 1965	12 Apr 1966 (see <i>Gazette</i> 1966, p. 1963)	—
	as amended by			
	133, 1965	18 Dec 1965	14 Feb 1966	—
<i>Customs Act (No. 3) 1965</i>	133, 1965	18 Dec 1965	14 Feb 1966	—
<i>Customs Act 1966</i>	28, 1966	24 May 1966	S. 3: 16 June 1966 (see <i>Gazette</i> 1966, p. 3185) Remainder: Royal Assent	—
<i>Customs Act 1967</i>	54, 1967	30 May 1967	30 May 1967	S. 11
<i>Customs Act 1968</i>	14, 1968	16 May 1968	13 June 1968	—
<i>Customs Act (No. 2) 1968</i>	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 <i>Gazette</i> 1969, p. 5771)	S. 37
<i>Customs Act 1971</i>	12, 1971	5 Apr 1971	Ss. 1-3 and 5: Royal Assent S. 4: 1 July 1974 (see <i>Gazette</i> 1974, No. 53D, p. 1)	S. 5
<i>Customs Act (No. 2) 1971</i>	134, 1971	16 Dec 1971	13 Jan 1972	—
<i>Customs Act 1973</i>	162, 1973	7 Dec 1973	7 Dec 1973	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9 (1) and 10
<i>Customs Act 1974</i>	28, 1974	1 Aug 1974	1 Aug 1974	—
<i>Customs Act (No. 2) 1974</i>	120, 1974	3 Dec 1974	3 Dec 1974	Ss. 3 (2), 4 (2) and (3), 5 (2) and 6 (2)
<i>Postal and Telecommunications Commissions (Transitional Provisions) Act 1975</i> as amended by	56, 1975	12 June 1975	Ss. 4 and 38: 1 July 1975 (see s. 2 (1) and <i>Gazette</i> 1975, No. S122, p. 1) Remainder: Royal Assent	—
<i>Customs Act (No. 2) 1975</i>	107, 1975	9 Oct 1975	(see 107, 1975 below)	(see 107, 1975 below)
<i>Customs Act 1975</i>	77, 1975	20 June 1975	20 June 1975 (see s. 2)	—
<i>Customs Act (No. 2) 1975</i>	107, 1975	9 Oct 1975	(c)	S. 2
<i>Customs Amendment Act 1976</i>	41, 1976	2 June 1976	1 July 1976	S. 7
<i>Administrative Changes (Consequential Provisions) Act 1976</i>	91, 1976	20 Sept 1976	S. 3: (d)	S. 4
<i>Customs Amendment Act (No. 2) 1976</i>	174, 1976	13 Dec 1976	S. 4: 1 Feb 1977 (see <i>Gazette</i> 1977, No. S8, p. 1) Remainder: Royal Assent	—
<i>Customs Amendment Act 1977</i>	154, 1977	10 Nov 1977	Ss. 3, 4 and 9: 20 Oct 1978 (see <i>Gazette</i> 1978, No. S.195, p. 1) S. 7: 24 Oct 1978 (see <i>Gazette</i> 1978, No. S219, p. 1) Remainder: Royal Assent	Ss. 5 (2), 7 (2) and (3) and 13
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	S. 8
<i>Customs Amendment Act 1978</i>	183, 1978	4 Dec 1978	S. 3: 10 July 1978 Remainder: Royal Assent	Ss. 4 and 5
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1979</i>	19, 1979	28 Mar 1979	Parts II-XVII (ss. 3-123): 15 May 1979 (see <i>Gazette</i> 1979, No. S86, p. 1) Remainder: Royal Assent	S. 124
<i>Customs Amendment Act 1979</i>	92, 1979	14 Sept 1979	Ss. 5 and 6: (see Note 6) Remainder: Royal Assent	Ss. 4 (2) and (3) and 17
<i>Customs Amendment Act (No. 2) 1979</i>	116, 1979	25 Oct 1979	1 June 1980 (see s. 2 and <i>Gazette</i> 1980, No. G21, p. 2)	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Federal Police (Consequential Amendments) Act 1979</i>	155, 1979	28 Nov 1979	19 Oct 1979 (<i>see s. 2 and Gazette 1979, No. S206, p. 1</i>)	—
<i>Customs Amendment Act (No. 3) 1979</i>	177, 1979	4 Dec 1979	1 Nov 1979	—
<i>Customs Amendment Act (No. 4) 1979</i>	180, 1979	4 Dec 1979	4 Dec 1979	S. 14
<i>Customs Amendment Act (No. 2) 1980</i>	13, 1980	8 Apr 1980	1 Feb 1981 (<i>see s. 2 and Gazette 1980, No. S282, p. 1</i>)	Ss. 4 (2), 5 (2) and (3) and 7
<i>Customs Amendment Act 1980</i>	15, 1980	15 Apr 1980	16 Apr 1980 (<i>see s. 2</i>)	—
<i>Customs Amendment Act (No. 3) 1980</i>	110, 1980	6 June 1980	Ss. 3 (b), 4 and 5: 1 July 1980 (<i>see Gazette 1980, No. S146, p. 1</i>) Remainder: Royal Assent	Ss. 4 (2)-(4), 10 (2), 23 (2) and 32
<i>Customs Amendment Act (No. 4) 1980</i>	171, 1980	17 Dec 1980	1 Jan 1981	—
<i>Customs Amendment (Tenders) Act 1981</i>	45, 1981	14 May 1981	14 May 1981	—
<i>Statute Law Revision Act 1981</i>	61, 1981	12 June 1981	S. 115: Royal Assent (e)	—
<i>Customs Amendment Act 1981</i>	64, 1981	12 June 1981	Ss. 6-12, 15-18, 19 (2), 20-24 and 27: 21 Dec 1983 (<i>see Gazette 1983, No. S332, p. 1</i>) S. 13: (<i>see Note 3</i>) S. 14: (f) Remainder: 10 July 1981	Ss. 28 (2) and (3) and 38
as amended by <i>Off-shore Installations (Miscellaneous Amendments) Act 1982</i>	51, 1982	16 June 1982	(<i>see 51, 1982 below</i>)	(<i>see 51, 1982 below</i>)
<i>Customs Amendment (Securities) Act 1981</i>	67, 1981	12 June 1981	10 July 1981	S. 3 (2)
<i>Customs (Unlawful Exportation of Food) Amendment Act 1981</i>	152, 1981	26 Oct 1981	26 Oct 1981	—
<i>Customs (Valuations) Amendment Act 1981</i>	157, 1981	27 Oct 1981	S. 4: 14 May 1981 Ss. 5, 8 and 11-13: 30 Nov 1981 (<i>see Gazette 1981, No. S246, p. 1</i>) S. 9: 10 July 1981 Remainder: Royal Assent	Ss. 10 (2) and 13
<i>Export Control (Miscellaneous Amendments) Act 1982</i>	48, 1982	9 June 1982	1 Jan 1983 (<i>see s. 2 and Gazette 1982, No. G48, p. 2</i>)	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Off-shore Installations (Miscellaneous Amendments) Act 1982</i>	51, 1982	16 June 1982	Ss. 12, 13, 22 and Part III (ss. 26-28): 21 Dec 1983 (see s. 2 (2) and <i>Gazette</i> 1983, No. S332, p. 1) Remainder: 14 July 1982	S. 25
<i>Statute Law (Miscellaneous Amendments) Act (No. 2) 1982</i>	80, 1982	22 Sept 1982	Part LXXVII (s. 280): Royal Assent (g)	S. 280 (2) and (3)
<i>Customs and Excise Amendment Act 1982</i>	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 and 69 (4): 26 Apr 1983 (see <i>Gazette</i> 1983, No. S80, p. 1) Ss. 6, 8, 11, 13, 26, 27, 30, 31, 53 and 70 (1) and (2): 22 Dec 1983 (see <i>Gazette</i> 1983, No. S333, p. 1) Ss. 5, 7, 9, 10, 12, 14, 15, 22, 24, 25, 54, 66, 69 (1)-(3), 70 (3) and (4): (see (h) and Note 2)	Ss. 6 (2) and 71
as amended by <i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1983</i>	39, 1983	20 June 1983	S. 3: 22 Dec 1983 (j)	—
<i>Diesel Fuel Taxes Legislation Amendment Act 1982</i>	108, 1982	5 Nov 1982	(k)	S. 5 (2)
<i>Customs Tariff (Miscellaneous Amendments) Act 1982</i>	115, 1982	22 Nov 1982	Ss. 1, 2, 7 and 8 (1): Royal Assent Remainder: 1 Jan 1983 (see s. 2 and <i>Gazette</i> 1982, No. S 274, p. 3)	S. 12
<i>Customs Securities (Anti-Dumping) Amendment Act 1982</i>	137, 1982	23 Dec 1982	24 Nov 1982	S. 4 (2)
<i>Customs Amendment Act 1983</i>	19, 1983	14 June 1983	Ss. 5 and 6: 1 July 1983 (see <i>Gazette</i> 1983, No. S136, p. 3) Remainder: Royal Assent	S. 2 (2) and (3)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1983</i>	39, 1983	20 June 1983	S. 3: (see (l) and Note 5) and (m)	S. 7 (1)
<i>Customs and Excise Amendment Act 1983</i>	101, 1983	23 Nov 1983	Ss. 1-3, 6, 7 and 9: (n) Ss. 8 and 11: Royal Assent S. 4: (see (p) and Note 4) S. 5: 1 Jan 1983 Ss. 10 and 12: 2 July 1983 (see s. 2 (5))	S. 6 (2)

*Substantive amendments
to the Customs Act
1901 made by
the Customs and
Excise Amendment
Act 1983 (No. 101)
from 1 Apr 1983 (1)
for ss. 69(1) (B)
and 70(11)*

*1982 Act
Customs and
Excise Amendment
Act 1983*

NOTES—continued

Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Customs Tariff (Anti-Dumping) Miscellaneous Amendments Act 1984</i>	2, 1984	14 Mar 1984	14 Mar 1984	—

- (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*.
- (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*, sub-section 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 *Customs Act 1901* was amended by section 115 only of the *Statute Law Revision Act 1981*, sub-section 2 (1) of which provides that section 115 shall come into operation on Royal Assent.
- (f) Section 14 of the *Customs Amendment Act 1981* amended section 70 of the *Customs Act 1901*. As at 14 March 1984 no date had been fixed for the commencement of section 14 of the *Customs Amendment Act 1981*. Section 11 of the *Customs and Excise Amendment Act 1982* repealed section 70 of the *Customs Act 1901*. The date fixed for the commencement of section 11 of the *Customs and Excise Amendment Act 1982* was 22 December 1983.
- (g) The *Customs Act 1901* was amended by Part LXXVII (section 280) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, sub-section 2 (1) of which provides that Part LXXVII shall come into operation on Royal Assent.
- (h) The *Customs Act 1901* was amended by sections 3-71 only of the *Customs and Excise Amendment Act 1982*, section 2 of which provides as follows:
- "2. (1) Sections 1, 2, 3 and 71 shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on such date as is, or on such respective dates as are, fixed by Proclamation." (See Note 2 below.)
- (i) The *Customs and Excise Amendment Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, sub-section 2 (5) 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;
- • • • •
- (k) 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."

NOTES—continued

Table of Acts—continued

- (f) The *Customs Act 1901* was amended by section 3 and Schedule 1 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, sub-section 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*; (see Note 5 below).

* * * * *

- (m) The *Customs Act 1901* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, sub-section 2 (4) of which provides as follows:

"(4) The amendments of the *Customs Act 1901* made by this Act shall—

* * * * *

- (b) in the case of the amendment of sub-section 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 date of the commencement of paragraph 2 (4) (b) was 18 July 1983.

- (n) Sub-section 2 (1) of the *Customs and Excise Amendment Act 1983* provides 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."

- (p) The *Customs Act 1901* was amended by section 4 of the *Customs and Excise Amendment Act 1983*, sub-section 2 (3) of which provides as follows:

"(3) Section 4 shall come into operation immediately after the commencement of section 25 of the *Customs and Excise Amendment Act 1982*." (See Note 4 below).

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; Nos. 92, 155 and 180, 1979; No. 110, 1980; Nos. 64 and 152, 1981; Nos. 48, 51, 80 and 115, 1982
S. 5	rs. No. 56, 1951 am. No. 216, 1973; No. 28, 1974; No. 81, 1982
S. 5A	ad. No. 51, 1982
S. 6	rep. No. 28, 1974
S. 7	am. No. 28, 1974; No. 154, 1977; No. 51, 1982
S. 8	am. No. 10, 1916 rs. No. 14, 1968 am. No. 51, 1982
S. 8A	ad. No. 12, 1923 rs. No. 14, 1968
Ss. 9-11	rs. No. 92, 1979
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
S. 14	am. No. 12, 1923; No. 64, 1981

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 15	am. No. 12, 1923; No. 108, 1952; No. 54, 1959 rs. No. 110, 1980
S. 16	am. No. 12, 1923; No. 108, 1952 rep. No. 110, 1980
S. 18	rep. No. 110, 1980
S. 19	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981
S. 20	rs. No. 54, 1959 rep. No. 104, 1968
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
S. 28	am. No. 28, 1966; No. 54, 1967 rs. No. 110, 1980
S. 29	rep. No. 110, 1980
S. 30	am. No. 36, 1910; No. 104, 1968; No. 64, 1981
S. 31	am. No. 12, 1923; No. 108, 1952; No. 64, 1981
S. 33	am. No. 28, 1966; No. 54, 1967; No. 104, 1968 rs. No. 64, 1981 am. No. 51, 1982
S. 33A	ad. No. 51, 1982
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
S. 36	am. No. 64, 1981 rs. No. 81, 1982
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
S. 38	rs. No. 81, 1982
Ss. 38A, 38B	ad. No. 81, 1982
S. 39	am. No. 12, 1923; No. 7, 1934 rs. No. 64, 1981
S. 40	am. No. 28, 1966; No. 54, 1967 rs. No. 64, 1981
S. 40AA	ad. No. 104, 1968 am. No. 28, 1974; No. 64, 1981; No. 81, 1982
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

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
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
S. 43	am. No. 108, 1952 rs. No. 37, 1957
S. 45	am. No. 77, 1975; Nos. 64 and 67, 1981
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
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
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
S. 58	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 51, 1982
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)
S. 60	am. No. 12, 1923; No. 108, 1952; No. 37, 1957; No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 51, 1982
S. 61	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981 rs. No. 51, 1982
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
S. 63	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981
S. 64	rs. No. 12, 1923 am. No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 51, 1982
S. 64A	ad. No. 51, 1982
S. 65	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 28, 1974; No. 64, 1981
Ss. 66, 67	am. No. 28, 1966; No. 54, 1967; No. 64, 1981
S. 68	rs. No. 54, 1959 am. No. 104, 1968 rs. 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. 69	rs. No. 81, 1982
S. 70	rep. No. 81, 1982
S. 71	rs. No. 36, 1910 am. No. 7, 1934 rs. No. 64, 1981
S. 71A	ad. No. 104, 1968 am. No. 64, 1981
S. 71B	ad. No. 104, 1968 am. No. 28, 1974; No. 64, 1981; No. 81, 1982
S. 72	am. No. 12, 1923; No. 111, 1960; No. 104, 1968 rs. No. 64, 1981
S. 73	am. No. 12, 1923; No. 7, 1934; No. 28, 1966; No. 54, 1967; No. 64, 1981
S. 74	am. No. 28, 1966; No. 54, 1967; No. 64, 1981
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
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
S. 79	am. No. 54, 1959 rs. No. 110, 1980
S. 80	rs. No. 12, 1923; No. 110, 1980 am. No. 81, 1982
S. 81	am. No. 12, 1923 rs. No. 110, 1980 am. No. 81, 1982
S. 82	rep. No. 80, 1950 ad. No. 110, 1980 am. No. 81, 1982
S. 83	am. No. 12, 1923 rep. No. 104, 1968 ad. No. 110, 1980 am. No. 81, 1982
S. 84	rep. No. 104, 1968 ad. No. 110, 1980
S. 85	rs. No. 12, 1923; No. 110, 1980
S. 86	rep. No. 104, 1968 ad. No. 110, 1980 am. No. 81, 1982
S. 87	rs. No. 110, 1980 am. No. 81, 1982
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
S. 91	rep. No. 21, 1906 ad. 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. 92	am. No. 66, 1954; No. 28, 1966; No. 54, 1967; No. 104, 1968 rs. No. 110, 1980
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. 97	rs. No. 108, 1952 am. No. 28, 1974 rs. No. 110, 1980 am. No. 81, 1982
S. 98	rs. No. 110, 1980
S. 99	am. No. 104, 1968 rs. No. 110, 1980
Ss. 100-102	rs. No. 110, 1980
S. 103	am. No. 28, 1966; No. 54, 1967 rep. No. 110, 1980
S. 104	rs. No. 54, 1959 am. No. 28, 1974 rep. No. 110, 1980
S. 105	rs. No. 54, 1959 rep. No. 110, 1980
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
S. 112	rs. No. 36, 1910 am. No. 19, 1914; No. 7, 1934 rs. No. 56, 1951 am. No. 154, 1977; No. 81, 1982
S. 112A	ad. No. 36, 1910 am. No. 7, 1934 rep. No. 56, 1951
S. 113	am. No. 28, 1966; No. 54, 1967; No. 64, 1981
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
S. 114A	ad. No. 12, 1923 am. No. 28, 1966; No. 54, 1967; No. 28, 1974 rs. No. 154, 1977
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

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 116	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981
S. 117	rs. No. 81, 1982
S. 118	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 51, 1982
S. 119	rs. No. 12, 1923 am. No. 48, 1963; No. 28, 1974; No. 154, 1977; No. 64, 1981
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
S. 121	rep. No. 111, 1960
S. 122	am. No. 12, 1923; No. 108, 1952
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
S. 125	am. No. 28, 1966; No. 54, 1967; No. 64, 1981
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
S. 128	am. No. 12, 1923 rs. No. 108, 1952
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
S. 130C	ad. No. 104, 1968 am. No. 81, 1982
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
S. 132	rs. No. 48, 1963 am. No. 28, 1974; No. 81, 1982 (as am. by No. 39, 1983)
S. 132A	ad. No. 104, 1968
S. 132B	ad. No. 28, 1974 am. No. 64, 1981; No. 81, 1982
Ss. 132C, 132D	ad. No. 28, 1974

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 132E	ad. No. 28, 1974 rep. No. 61, 1981
S. 133	am. No. 107, 1975; No. 177, 1979; No. 15, 1980
S. 137	am. No. 54, 1947 rep. No. 12, 1971
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. 149	am. No. 12, 1923; No. 81, 1982
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
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
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. 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
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
S. 155	rs. No. 19, 1922 rep. No. 54, 1959 ad. No. 29, 1965 rep. No. 41, 1976 ad. No. 157, 1981

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 156	rs. No. 19, 1922 rep. No. 54, 1959 ad. No. 157, 1981 am. No. 115, 1982
S. 157	rs. No. 54, 1947 am. No. 28, 1974 rs. No. 157, 1981
S. 158	rep. No. 41, 1976 ad. No. 157, 1981
S. 159	am. No. 28, 1966; No. 54, 1967 rep. No. 41, 1976 ad. No. 157, 1981 am. No. 101, 1983
S. 160	am. No. 29, 1965 rep. No. 41, 1976 ad. No. 157, 1981
S. 161	am. No. 133, 1965; No. 216, 1973 rep. No. 41, 1976 ad. No. 157, 1981
Ss. 161A-161D	ad. No. 157, 1981
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
S. 162A	ad. No. 48, 1963 am. No. 14, 1968; No. 28, 1974; No. 64, 1981; No. 81, 1982
S. 162B	ad. No. 104, 1968 am. No. 28, 1974; No. 81, 1982
S. 163	am. No. 6, 1930; No. 7, 1934; No. 108, 1952; No. 47, 1953; No. 104, 1968 rs. No. 12, 1971
S. 164	rep. No. 12, 1971 ad. No. 108, 1982 am. No. 39, 1983; No. 101, 1983
S. 164A	ad. No. 45, 1949 rep. No. 12, 1971
S. 164B	ad. No. 56, 1950
S. 165	am. No. 104, 1968; Nos. 81 and 108, 1982
S. 167	rs. No. 36, 1910 am. No. 12, 1923; No. 48, 1963; No. 28, 1974; No. 64, 1981
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
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

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
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	rs. No. 110, 1980 am. No. 81, 1982
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
Ss. 181-183, 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
S. 183CA	ad. No. 110, 1980 am. No. 81, 1982
S. 183CB	ad. No. 110, 1980
S. 183CC	ad. No. 110, 1980 am. No. 81, 1982
Ss. 183CD, 183CE	ad. No. 110, 1980 rs. No. 81, 1982
Ss. 183CF, 183CG	ad. No. 110, 1980 am. No. 81, 1982
S. 183CH	ad. No. 110, 1980
S. 183CJ	ad. No. 110, 1980 am. No. 81, 1982
Ss. 183CK, 183CL	ad. No. 110, 1980
Ss. 183CM-183CP	ad. No. 110, 1980 am. No. 81, 1982
Div. 4 of Part XI (ss. 183CQ-183CU)	ad. No. 110, 1980
S. 183CQ	ad. No. 110, 1980 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. 183CR	ad. No. 110, 1980
Ss. 183CS, 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
S. 183DA	ad. No. 110, 1980 am. Nos. 80 and 81, 1982
Ss. 183DB, 183DC	ad. No. 110, 1980 am. No. 81, 1982
S. 183DD	ad. No. 110, 1980 am. Nos. 80 and 81, 1982
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
Ss. 183S-183U	ad. No. 54, 1959 am. No. 110, 1980
S. 184	am. No. 12, 1923; No. 108, 1952 rs. No. 64, 1981 (as am. by No. 51, 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)
S. 187	am. No. 12, 1923; No. 64, 1981 rs. No. 51, 1982
S. 188	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 51, 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; No. 51, 1982

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 192	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981
S. 194	am. No. 64, 1981
S. 195	am. No. 36, 1910; No. 12, 1923 rs. No. 110, 1980 am. No. 51, 1982
S. 196	am. No. 36, 1910; No. 61, 1981
S. 196C	ad. No. 64, 1981
S. 197	am. No. 28, 1966; No. 54, 1967; No. 64, 1981
S. 197A	ad. No. 111, 1960 am. No. 28, 1966; No. 54, 1967; No. 64, 1981
S. 198	am. No. 14, 1968; No. 216, 1973; No. 19, 1979
S. 199	am. No. 36, 1910; No. 66, 1954; No. 37, 1957 rs. No. 48, 1963 am. No. 14, 1968; No. 28, 1974
Ss. 200, 201	am. No. 12, 1923
S. 202	am. No. 28, 1966; No. 54, 1967; No. 64, 1981
S. 203	am. No. 12, 1923 rs. No. 64, 1981
S. 204	rs. No. 110, 1980; No. 64, 1981
S. 205	am. No. 12, 1923; No. 48, 1963; No. 14, 1968 rs. No. 64, 1981 am. No. 81, 1982
S. 206	am. No. 12, 1923; No. 14, 1968 rs. No. 64, 1981 am. No. 81, 1982
S. 207	am. No. 110, 1980; No. 64, 1981 rs. No. 64, 1981
S. 208	am. No. 12, 1923 rs. No. 64, 1981 am. No. 81, 1982
S. 208A	ad. No. 64, 1981 am. No. 157, 1981; No. 81, 1982
S. 208B	ad. No. 64, 1981
Ss. 208C, 208D	ad. No. 64, 1981 am. No. 81, 1982
S. 208E	ad. No. 64, 1981
S. 209	rs. No. 110, 1980 am. No. 81, 1982
S. 210	rs. No. 36, 1910 am. No. 54, 1959; No. 28, 1966; No. 54, 1967; No. 92, 1979; No. 64, 1981
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
S. 214A	ad. No. 108, 1982 am. No. 39, 1983; No. 2, 1984
S. 214B	ad. No. 2, 1984
S. 216	am. No. 64, 1981 rep. No. 81, 1982
S. 218	rs. 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
Div. 1A of Part XII (ss. 219A-219K)	ad. No. 92, 1979
S. 219A	ad. No. 92, 1979 am. No. 180, 1979
S. 219B	ad. No. 92, 1979 am. Nos. 116 and 180, 1979
S. 219C	ad. No. 92, 1979 am. No. 81, 1982
Ss. 219D, 219E	ad. No. 92, 1979 am. No. 180, 1979
S. 219F	ad. No. 92, 1979 am. Nos. 116 and 180, 1979
S. 219G	ad. No. 92, 1979 am. No. 180, 1979; No. 81, 1982
S. 219H	ad. No. 92, 1979 am. No. 180, 1979
S. 219J	ad. No. 92, 1979 rep. No. 180, 1979
S. 219K	ad. No. 92, 1979 am. No. 180, 1979
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
S. 228A	ad. No. 51, 1982
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
S. 229A	ad. No. 154, 1977 am. No. 92, 1979; No. 110, 1980; No. 64, 1981
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
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

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
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
S. 234	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 154, 1977; No. 64, 1981; No. 81, 1982
S. 234AA	ad. No. 110, 1980
S. 234A	ad. No. 108, 1952 am. No. 37, 1957; No. 28, 1966; No. 54, 1967; No. 110, 1980; No. 64, 1981
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
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
S. 241	rep. No. 81, 1982
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
S. 243B	ad. No. 92, 1979 am. No. 64, 1981
S. 243C	ad. No. 92, 1979 am. No. 180, 1979
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
S. 243F	ad. No. 92, 1979 am. No. 13, 1980; No. 64, 1981; No. 81, 1982
S. 243G	ad. No. 92, 1979 am. No. 13, 1980; No. 64, 1981
Ss. 243H-243K	ad. No. 92, 1979 am. No. 13, 1980
S. 243L	ad. No. 92, 1979 am. No. 13, 1980; No. 64, 1981
S. 243M	ad. No. 92, 1979 rs. No. 13, 1980
Ss. 243N-243Q	ad. No. 92, 1979 am. No. 13, 1980
Ss. 243R, 243S	ad. No. 92, 1979
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
S. 245A	ad. No. 36, 1910

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
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. 255	rs. No. 12, 1923
S. 256	am. No. 14, 1968
S. 257	rep. No. 81, 1982
S. 258	rep. No. 37, 1957
S. 258A	ad. No. 7, 1934 rep. No. 37, 1957
S. 260	rep. No. 37, 1957
S. 263	rs. No. 48, 1963 am. No. 216, 1973; No. 28, 1974
S. 264	am. No. 64, 1981; No. 81, 1982
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
S. 266	rep. No. 110, 1980 ad. No. 45, 1981 am. No. 157, 1981
S. 267	rep. No. 110, 1980 ad. No. 45, 1981 am. No. 81, 1982
S. 268	am. No. 28, 1966; No. 54, 1967 rep. No. 110, 1980 ad. No. 45, 1981
S. 268A	ad. No. 48, 1963 am. No. 28, 1966 rep. No. 110, 1980
S. 269	rep. No. 110, 1980 ad. No. 45, 1981
S. 269A	ad. No. 45, 1981
Part XVA (ss. 269B-269S)	ad. No. 19, 1983
Ss. 269B-269S	ad. No. 19, 1983
Part XVB (ss. 269T-269V)	ad. No. 2, 1984
Ss. 269T-269V	ad. No. 2, 1984
Heading to Part XVI	am. No. 108, 1952
S. 270	am. No. 36, 1910; No. 12, 1923; No. 28, 1966; No. 54, 1967; Nos. 64 and 152, 1981; 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. 271	rep. No. 12, 1923 ad. No. 108, 1952 rs. No. 47, 1953 am. No. 29, 1965
Ss. 272, 273	ad. No. 47, 1953 am. No. 29, 1965
Ss. 273A-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
Ss. 272, 273	rep. No. 9, 1910
S. 273G	ad. No. 92, 1979
S. 273GA	ad. No. 110, 1980 am. No. 157, 1981; Nos. 81 and 108, 1982; No. 19, 1983
S. 273H	ad. No. 110, 1980 rs. No. 115, 1982
S. 274	am. No. 12, 1923; No. 56, 1950; No. 14, 1968
S. 275	am. No. 12, 1923; No. 56, 1950; No. 110, 1980
S. 275A	ad. No. 48, 1963 am. No. 28, 1966; No. 14, 1968; No. 28, 1974; No. 64, 1981
S. 276	am. No. 81, 1982
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
Schedule IV	am. No. 12, 1923; No. 66, 1954; No. 37, 1957; No. 48, 1963; No. 28, 1974; No. 154, 1977; No. 110, 1980
Schedule V	ad. No. 12, 1923 am. No. 56, 1950; No. 48, 1963; No. 28, 1974; No. 154, 1977
Schedule VI	ad. No. 134, 1971 rs. No. 154, 1977
Schedule VII	ad. No. 41, 1976 rep. No. 157, 1981
Schedule VIII	ad. No. 92, 1979

2. Sections 5, 7, 9, 10, 12, 14, 15, 22, 24, 25, 54, 66, 69 (1)-(3), 70 (3) and (4) of the *Customs and Excise Amendment Act 1982* are to come into operation on such date as is, or on such respective dates as are, fixed by Proclamation. As at 31 March 1984 no date had been fixed and the amendments made by them are not incorporated in this reprint. They are set out below under the heading "EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT ACT 1982".
3. Section 64 is amended by section 13 of the *Customs Amendment Act 1981*. Section 13 provides as follows:

NOTES—continued

"Report of cargo"

13. Section 64 of the Principal Act is amended—

(a) by omitting paragraph (a) and substituting the following paragraph:

'(a) the master or owner of the ship or the pilot or owner of the aircraft shall, within the prescribed time after the arrival of the ship at a port or the arrival of the aircraft at an airport, make a report of the ship or aircraft and of the cargo of the ship or aircraft in accordance with the regulations; and

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

'(2) The time prescribed for the purposes of paragraph (a) of sub-section (1) may be a time prescribed in relation to all ships and aircraft, in relation to ships, in relation to aircraft, in relation to ships in a class of ships or in relation to aircraft in a class of aircraft.'

By virtue of sub-section 2 (2) of the *Customs Amendment Act 1981*, section 13 of that Act shall come into operation on a date to be fixed by Proclamation. As at 31 March 1984 no date had been fixed and the amendments are not incorporated in this reprint.

4. Section 106 is amended by section 4 of the *Customs and Excise Amendment Act 1983*. Section 4 provides as follows:

"Requirements for grant of depot licence"

4. Section 106 of the Principal Act is amended by adding at the end thereof the following sub-section:

'(4) The regulations may prescribe circumstances in which the Comptroller shall not grant a depot licence or a depot licence included in a class of depot licences, being circumstances relating to—

(a) the location of the place in relation to which the licence is sought; or

(b) the quantity of goods that would be involved in the proposed use of that place if it were a depot.'

By virtue of sub-section 2 (3) of the *Customs and Excise Amendment Act 1983*, section 4 shall come into operation immediately after the commencement of section 25 of the *Customs and Excise Amendment Act 1982*. As at 31 March 1984 no commencing date had been fixed and the amendment is not incorporated in this reprint.

5. Sub-sections 131A (1) and (2) are amended by section 3 and Schedule 1 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*. The provisions of Schedule 1 applicable to the *Customs Act 1901* provide as follows:

"Sub-section 131A (1)—

Omit 'subject to sub-section (2),'

Sub-section 131A (2)—

Omit the sub-section."

Sub-section 2 (4) of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983* 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*;"

As at 31 March 1984 no date had been fixed and the amendments are not incorporated in this reprint.

NOTES—continued

6. Ss. 161A (3) and 267 (1)—The *Customs Tariff Act 1966* was repealed by the *Customs Tariff Act 1982* (No. 113, 1982).
7. Sections 196, 196A and 196B are amended by sections 5 and 6 of the *Customs Amendment Act 1979*. Sections 5 and 6 provide as follows:

"Suspected persons—detention and search

5. Section 196 of the Principal Act is amended—

- (a) by omitting 'If' and substituting 'Subject to section 196B, if';
- (b) by omitting 'The officer may detain' and substituting 'An officer may detain';
- (c) by omitting 'a Justice or' and substituting 'a Magistrate or, if the search is not to involve an examination of the body cavities of the suspected person,; and
- (d) by omitting 'Justice' (second and third occurring) and substituting 'Magistrate'.

6. After section 196 of the Principal Act the following sections are inserted:

Orders for searches of suspected persons

'196A. (1) An order shall not be made by a Magistrate under section 196 for the searching of a suspected person unless the Magistrate is satisfied, by information on oath, that there is reasonable ground for suspecting that the person is unlawfully carrying, or has secreted about him, any goods subject to the control of the Customs, any prohibited imports or any prohibited exports.

'(2) An order of a Magistrate under section 196 for the searching of a suspected person shall be in accordance with the prescribed form.

Certain searches to be carried out only by medical practitioners

'196B. (1) An officer of Customs or of police who is authorized by or under section 196 to search a suspected person shall not carry out a search by way of an examination of the body cavities of the person, but may, subject to sub-section (2), arrange for a medical practitioner to examine the body cavities of the person.

'(2) Where an officer of Customs or of police is authorized by an order of the Collector to search a suspected person, sub-section (1) does not authorize the officer of Customs or of police to arrange for a medical practitioner to examine the body cavities of that person.

'(3) Where a medical practitioner carries out an examination of the body cavities of a person in pursuance of arrangements made by an officer of Customs or of police under this section, proceedings do not lie against the medical practitioner in respect of anything reasonably done by him for the purpose of the examination.

'(4) A medical practitioner who carries out an examination of the body cavities of a person in pursuance of arrangements made by an officer of Customs or of police under this section may sign a certificate, in accordance with the prescribed form, setting out the results of the examination.

'(5) In any proceedings under this Act, a certificate by a medical practitioner under sub-section (4) is *prima facie* evidence of the matters stated in the certificate.

'(6) For the purposes of sub-section (5), a document purporting to be a certificate under sub-section (4) and to be signed by a medical practitioner shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

'(7) Where a medical practitioner furnishes to an officer of Customs or of police a certificate, signed by him, setting out the results of an examination carried out by him of the body cavities of a person, the officer of Customs or of police shall cause a copy of the certificate to be furnished to the person as soon as practicable after the certificate is furnished to him.

NOTES—continued

(8) In this section, "medical practitioner" means any person, whether male or female, registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners."

By virtue of sub-section 2 (2) of the *Customs Amendment Act 1979*, sections 5 and 6 shall come into operation on a date to be fixed by Proclamation. As at 31 March 1984 no date had been fixed and the amendments are not incorporated in this reprint.

8. S. 273B (1)—Now cited as the *Statutory Rules Publication Act 1903*.

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT ACT 1982

Appointment of sufferance wharves, &c.

5. Section 17 of the Principal Act is repealed.

Permission to remove goods subject to Customs control without entry

7. Section 40AA of the Principal Act is amended—

- (a) by omitting from sub-section (1) "A Collector" and substituting "Subject to the regulations (if any), a Collector";
- (b) by omitting from sub-section (1) "until the permission is revoked" and substituting "subject to sub-sections (8) and (9)";
- (c) by omitting from sub-section (2) "A Collector" and substituting "Subject to the regulations (if any), a Collector";
- (d) by inserting in sub-section (2) ", subject to sub-sections (8) and (9)," after "specified, and";
- (e) by omitting sub-section (3) and substituting the following sub-sections:

"(3) Without limiting the matters that may be prescribed in regulations referred to in sub-section (1) or (2), those regulations may—

- (a) prescribe circumstances in which permission under sub-section (1) or (2), as the case may be, may be given; or
- (b) prescribe matters to be taken into account by a Collector when deciding whether to give permission under sub-section (1) or (2), as the case may be.

"(3A) A Collector may, when giving permission under sub-section (1) or (2) or at any time while a permission under sub-section (1) or (2) is in force, impose conditions in respect of the permission, being conditions prescribed by the regulations or 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.

"(3B) A condition imposed in respect of a permission under sub-section (1) or (2), 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 person to whom the permission has been given or at such later time (if any) as is specified in the notice.

"(3C) A condition imposed in respect of a permission under sub-section (1) or (2), or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition 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."

NOTES—continued

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT

ACT 1982—continued

- (f) by omitting from sub-section (4) "a requirement specified in the permission" and substituting "a condition in respect of the permission";
- (g) by omitting from paragraph (4) (b) "requirement" and substituting "condition"; and
- (h) by adding at the end thereof the following sub-sections:

"(8) A Collector may, in accordance with the regulations, revoke a permission under sub-section (1) or (2) in relation to such of the goods to which the permission relates as have not been moved or to some of those goods.

"(9) Without limiting the powers of a Collector under, or the matters that may be prescribed in regulations referred to in, sub-section (8), where—

- (a) permission has been given under sub-section (1) or (2) for the removal of goods that have been, or are to be, imported, being removal from the port or airport at which they have been, or are to be, discharged to a place outside the State or Territory in which that port or airport is situated; and
- (b) an entry in respect of the goods or some of the goods is given under section 36 or 37 to a Collector other than a Collector for that place within the meaning of section 36,

the permission is, by force of this sub-section, revoked in relation to the goods in respect of which the entry was given."

- 9. Section 64 of the Principal Act is repealed and the following section is substituted:

Reports in relation to ships, aircraft and cargo

"64. (1) The regulations may make provision for the making of reports in relation to ships and aircraft arriving at a port or airport, as the case may be, in Australia from parts beyond the seas and to the cargo of such ships and aircraft (including reports in respect of the cargo that is to be discharged at a particular port or airport).

"(2) Without limiting the generality of sub-section (1), regulations for the purposes of that sub-section providing for the making of reports may—

- (a) prescribe the persons who are to make the reports, being persons having, or reasonably able to obtain, sufficient information to make them;
- (b) provide that any one of 2 or more prescribed persons may make a report but that each of those persons is to be guilty of an offence if the report is not made;
- (c) provide for 2 or more reports in relation to a ship, an aircraft or cargo; or
- (d) prescribe the time within which the reports are to be made, which may be—
 - (i) a time prescribed in relation to all ships and aircraft, in relation to all ships, in relation to ships in a class of ships, in relation to all aircraft or in relation to aircraft in a class of aircraft; or
 - (ii) a time before the arrival of the relevant ship or aircraft.

"(3) Notwithstanding sub-section 270 (2), regulations for the purposes of sub-section (1) may prescribe penalties not exceeding \$2,000 in respect of any contravention of any of those regulations."

- 10. After section 65 of the Principal Act the following section is inserted:

Information in respect of cargo

"65A. (1) The master or owner of a ship that has arrived in, or that has commenced a voyage to, Australia from parts beyond the seas, or a person having, or reasonably able to

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EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT
ACT 1982—continued

obtain, sufficient information to enable him to do so, shall, when required to do so by a Collector, answer questions relating to the ship or to its cargo, crew, passengers, stores or voyage.

"(2) The master or owner of a ship that has arrived in, or that has commenced a voyage to, Australia from parts beyond the seas, or a person able to do so, shall, when required to do so by a Collector, produce documents relating to the ship or to its cargo, crew, passengers, stores or voyage.

"(3) The pilot or owner of an aircraft that has arrived in, or that has commenced a flight to, Australia from parts beyond the seas, or a person having, or reasonably able to obtain, sufficient information to enable him to do so, shall, when required to do so by a Collector, answer questions relating to the aircraft or to its cargo, crew, passengers, stores or flight.

"(4) The pilot or owner of an aircraft that has arrived in, or that has commenced a flight to, Australia from parts beyond the seas, or a person able to do so, shall, when required to do so by a Collector, produce documents relating to the aircraft or to its cargo, crew, passengers, stores or flight.

Penalty: \$1,000."

12. After section 71 of the Principal Act the following section is inserted:

Permission for transshipment without entry

"71AA. (1) A Collector may give permission in writing for the transshipment, without entry, of prescribed goods, and prescribed goods to which such a permission applies may be delivered for transshipment and transhipped notwithstanding that an entry of the goods for transshipment has not been made under this Act.

"(2) Goods that are delivered for transshipment by authority of sub-section (1) shall, for the purposes of this Act, be deemed to be entered for transshipment on the day on which they are so delivered.

"(3) A Collector may, when giving permission under sub-section (1) for the transshipment of goods or at any time while the permission is in force, impose conditions in respect of the permission, being—

- (a) conditions to be complied with by a person carrying out a specified step in the delivery for transshipment, or the transshipment, of the goods; and
- (b) 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.

"(4) A condition imposed in respect of a permission under sub-section (3) 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 the person carrying out, or proposing to carry out, the step in respect of which the condition to which the notice relates applies or at such later time (if any) as is specified in the notice.

"(5) A condition imposed in respect of a permission under sub-section (3) or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition

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ACT 1982—continued

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.

“(6) A Collector may, in accordance with the regulations, revoke a permission given under this section in relation to such of the goods to which the permission relates as have not been delivered for transshipment or to some of those goods.

“(7) If, in relation to the delivery for transshipment, or the transshipment, of any goods, a person required to comply with a condition imposed in respect of a permission under sub-section (3) 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.

“(8) In this section, ‘prescribed goods’ means imported goods subject to the control of the customs that are included in a class of goods prescribed for the purposes of this section.”

14. Sections 74 and 76 of the Principal Act are repealed and the following section is substituted:

Unloading goods

“74. (1) Except as prescribed, goods shall not be unloaded from a ship or an aircraft otherwise than in accordance with permission given by a Collector under this section.

Penalty: \$25,000.

“(2) Subject to the regulations (if any), a Collector may give permission in writing to a person specified in the permission to unload goods that are specified in the permission and, subject to sub-section (11), the permission is authority for the person to unload those goods.

“(3) Permission referred to in sub-section (2) may relate to particular goods, all goods in a particular ship or aircraft, all goods desired to be unloaded by a particular person or otherwise.

“(4) Without limiting the matters that may be prescribed in regulations referred to in sub-section (2), those regulations may—

- (a) prescribe circumstances in which permission under that sub-section may be given; or
- (b) prescribe matters to be taken into account by a Collector when deciding whether to give permission under that sub-section.

“(5) A Collector may, when giving permission under sub-section (2) or at any time while a permission under that sub-section is in force, impose conditions in respect of the permission, being conditions prescribed by the regulations or 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.

“(6) Without limiting the generality of sub-section (5), a condition referred to in that sub-section relating to the unloading of goods may be a condition that, for the purpose of the examination of, or the prevention of any tampering with, the goods, the goods are to be moved to, or are to remain at, a particular place after being unloaded (including moved after having been previously moved in accordance with a condition).

“(7) A condition imposed in respect of a permission under sub-section (5) 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

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ACT 1982—continued

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.

"(8) A condition imposed in respect of a permission under sub-section (5), or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition 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.

"(9) Notwithstanding any other provision of, or any permission given under, this Act, while there is in force under sub-section (5) a condition requiring goods to be moved to, or to remain at, a particular place, any authority under section 39, or any permission under section 40AA, relating to the goods shall be deemed to be suspended.

"(10) Goods that are being moved, or kept at a place, in accordance with a condition imposed in respect of a permission under sub-section (5) shall be so moved or kept at the expense and risk of the owner of the ship or aircraft from which they were unloaded as if they had not been unloaded.

"(11) A Collector may, in accordance with the regulations, revoke a permission given under this section in relation to such of the goods to which the permission relates as have not been unloaded or to some of those goods.

"(12) If, in relation to the unloading of any goods, the person to whom permission has been given under sub-section (2) fails to comply with a condition imposed in respect of the permission under sub-section (5), he is guilty of an offence punishable upon conviction by a penalty not exceeding \$10,000."

Interpretation

15. Section 78 of the Principal Act is amended by omitting from sub-section (1) the definition of "place" and substituting the following definition:

" 'place' includes—

- (a) an area (whether containing a building, part of a building or otherwise);
- (b) 2 or more areas (whether or not adjoining and whether containing a building, part of a building or otherwise);
- (c) a building or part of a building;
- (d) buildings (whether or not adjoining); and
- (e) parts of a building or of buildings (whether or not the parts are adjoining);".

22. After section 96 of the Principal Act the following section is inserted:

Duty free shops

"96A. (1) In this section—

'duty free shop' means a warehouse the warehouse licence that relates to which authorizes the sale in the warehouse of goods to relevant travellers;

'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;

'place outside Australia' does not include—

- (a) a ship, or an area of waters, outside Australia;
- (b) an installation outside Australia; or
- (c) a reef, or an uninhabited island, outside Australia;

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EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT

ACT 1982—continued

'proprietor', in relation to a duty free shop, means the holder of the warehouse licence that relates to the duty free shop;

'relevant traveller' means a person who intends to make an international flight, whether as a passenger on, or as the pilot or a member of the crew of, an aircraft.

"(2) Subject to the regulations (if any), a Collector may give permission, in accordance with sub-section (3), for goods that are specified in the permission and are sold to a relevant traveller in a 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 in relation to which he is a relevant traveller; and
- (b) exported by the relevant traveller when making that flight without the goods having been entered for export,

and, subject to sub-section (13), the permission is authority for such goods to be so delivered and so exported.

"(3) Permission under sub-section (2) is given in accordance with this sub-section if it is in writing and is delivered to the proprietor of the duty free shop to which the permission relates.

"(4) Permission under sub-section (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 sub-section (2), those regulations—

- (a) may prescribe circumstances in which permission under that sub-section may be given;
- (b) may prescribe matters to be taken into account by a Collector when deciding whether to give permission under that sub-section; and
- (c) may prescribe conditions to which a permission under that sub-section is to be subject.

"(6) A Collector may, when giving permission under sub-section (2) or at any time while a permission under that sub-section 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 sub-section (6), a condition referred to in that paragraph or that sub-section to which a permission is to be subject may be—

- (a) a condition to be complied with by the proprietor of the 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 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 in relation to which he is a relevant traveller; or

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EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT

ACT 1982—continued

- (c) a condition that the proprietor of the 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 sub-section (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 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 sub-section (6) or a revocation, suspension or variation, or a cancellation of a suspension, of a condition under sub-section (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 sub-section (2) is subject to—

- (a) the condition that the proprietor of the 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 sub-section (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 a duty free shop to which a permission under sub-section (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 sub-section (2) in relation to the sale of goods occurring after the revocation.”

24. Section 99 of the Principal Act is repealed and the following section is substituted:

Entry of warehoused goods

“99. (1) Warehoused goods may be entered—

- (a) for home consumption; or
- (b) for export.

“(2) Subject to sections 71A and 71B, 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 39.

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EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT

ACT 1982—continued

"(3) Subject to section 96A, warehoused goods, other than goods to which section 114A applies, 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 39."

25. After Part V of the Principal Act the following Part is inserted:

"PART VA—DEPOTS FOR BREAKING BULK AND HOLDING AND EXAMINING GOODS

Interpretation

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

'depot' means a place that a person or partnership is licensed under section 104 to use for a purpose or purposes specified in sub-section (1) of that section and, in relation to a depot licence, means the depot to which the licence relates;

'depot licence' means a licence granted under section 104 and includes such a licence that has been renewed under section 109;

'place' includes—

- (a) an area (whether containing a building, part of a building or otherwise);
- (b) 2 or more areas (whether or not adjoining and whether containing a building, part of a building or otherwise);
- (c) a building or part of a building;
- (d) buildings (whether or not adjoining); and
- (e) parts of a building or of buildings (whether or not the parts are adjoining).

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

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

- (a) he has authority to direct the operations of the depot or to direct activities in the depot, the removal of goods from the depot or another important part of the operations of the depot; or
- (b) he has authority to direct a person who has authority referred to in paragraph (a) in the exercise of that authority.

Depot licences

"104. (1) Subject to this Part, the Comptroller may grant a person or partnership a licence in writing, to be known as a depot licence, to use a place described in the licence for one or more of the following purposes:

- (a) the breaking of bulk of imported goods;
- (b) the holding of imported goods;
- (c) the examination by the Customs of imported goods;
- (d) the consolidation of goods intended for export;
- (e) the holding of goods intended for export; and
- (f) the examination by the Customs of goods intended for export.

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“(2) A depot licence may be a licence to use a place for purposes specified in sub-section (1) in respect of 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) For the purposes of sub-section (2), a class of goods includes goods, or goods of a particular kind, that have been transported to, or are to be transported from, Australia by a particular person or in a particular manner.

“(4) Subject to this Part, a depot licence may be granted notwithstanding that the depot to which the licence relates is connected to another depot or to other depots or is part of a place of which another depot is another part or other depots are other parts.

Applications for depot licences

“105. An application for a depot licence shall—

- (a) be in writing;
- (b) contain a description of the place in relation to which the licence is sought;
- (c) specify the purpose or purposes for which the applicant wishes to be licensed to use that place;
- (d) specify the kinds of goods that would be held or dealt with in that place if the licence were granted;
- (e) set out the name and address of each person whom the Comptroller is required to consider for the purposes of paragraph 106 (1) (a), (b), (c) or (d);
- (f) set out such particulars of the matters that the Comptroller is required to consider for the purposes of paragraphs 106 (1) (f) and (g) as will enable him adequately to consider those matters; and
- (g) contain such other information as is prescribed.

Requirements for grant of depot licence

“106. (1) The Comptroller shall not grant a depot licence if, in his opinion—

- (a) where the applicant is a natural person—the person is not a fit and proper person to hold a depot 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 depot 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 depot, 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 depot is not a fit and proper person so to participate;
- (e) where the applicant is a company—the company is not a fit and proper company to hold a depot licence;
- (f) the physical security of the place in relation to which the licence is sought is not adequate having regard to—
 - (i) the nature of the place;
 - (ii) the kinds and quantity of goods that would be held or dealt with in that place if the licence were granted; or
 - (iii) the procedures and methods that would be adopted by the applicant to ensure the security of goods in the place if the licence were granted;

NOTES—continued

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT
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- (g) the plant and equipment that would be used in relation to goods held or dealt with in the place in relation to which the licence is sought if the licence were granted are not suitable having regard to the nature of those goods and that place;
- (h) where the depot to which the licence would relate would, if another licence is in existence or were to be granted, be connected to another depot or to other depots or be part of a place of which another depot is another part or other depots are other parts—the applicant, or the holder of the licence relating to the other depot or to one of the other depots, would not comply with a condition referred to in sub-section 107 (4) to which his licence would be, or is, subject, as the case requires; or
- (j) the books of account or records that would be kept in relation to the place in relation to which the licence is sought (including records of the movement of goods into and out of the place) if it were a depot would not be suitable to enable the Customs adequately to audit those books or records or to obtain sufficient information for the purposes of the Customs in relation to goods moving into or out of the place.

“(2) The Comptroller 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 Comptroller shall, in determining whether a company is a fit and proper company for the purposes of paragraph (1) (e), 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 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;
- (d) whether the company has been placed under official management; or
- (e) whether the company is being wound-up.

NOTES—continued

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT
ACT 1982—continued

Conditions of depot licences

"107. (1) A depot 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 depot commences so to participate;
- (b) in the case of a licence held by a partnership—there is a change in the membership of the partnership;
- (c) a person, being—
 - (i) a person who participates in the management or control of the depot;
 - (ii) in the case of a licence held by a natural person, the holder of the licence; or
 - (iii) in the case of a licence held by a partnership, a member of the partnership,is convicted of an offence referred to in paragraph 106 (2) (a) or (b) or becomes bankrupt;
- (d) in the case of a licence held by a company—the company is convicted of an offence referred to in paragraph 106 (3) (a) or (b), a receiver of the property or part of the property of the company is appointed, the company is placed under official management or the company commences to be wound up;
- (e) there is a substantial change in a matter affecting the physical security of the depot; or
- (f) there is a substantial change in plant or equipment used in relation to goods in the depot,

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 Comptroller particulars in writing of that event, change, conviction, bankruptcy or appointment, as the case requires.

"(2) A depot licence is subject to such other conditions (if any) as are prescribed in relation to depot licences generally or in relation to depot licences included in a class of depot licences in which the first-mentioned depot licence is included.

"(3) A depot licence is subject to such other conditions (if any) as are specified in the licence, being conditions considered by the Comptroller to be necessary or desirable for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts.

"(4) Conditions referred to in sub-section (2) or (3) may, in the case of a depot licence that relates to a depot that is connected to another depot or to other depots or is part of a place of which another depot is another part or other depots are other parts, include conditions that are necessary or otherwise appropriate for a licence that relates to a depot that is so connected or is part of such a place, including conditions to be complied with by the holder of the licence acting jointly with the holder of the licence that relates to the other depot or with the holders of the licences that relate to the other depots, as the case requires.

"(5) The conditions specified in a depot licence may include—

- (a) conditions specifying the persons or classes of persons whose goods may be held or dealt with in the depot; and
- (b) conditions relating to the giving to a Collector of information relating to goods held or dealt with in the depot.

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

NOTES—continued

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT
ACT 1982—continued

Duration of depot licence

"108. (1) A depot 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 for 12 months following the grant of the licence but may be renewed in accordance with section 109.

"(2) Notwithstanding that a depot licence has not been renewed, a Collector may—

- (a) permit goods to be placed in the former depot;
- (b) permit the removal of goods from the former depot, including the removal of goods to another depot;
- (c) by notice in writing to the last holder of the licence, require him to remove all or specified goods in the former depot to another depot, or a warehouse, approved by the Collector;
- (d) take such control of the former depot or all or any goods in the former depot as may be necessary for the protection of the revenue or for ensuring compliance with the Customs Act;
- (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 depot permitted by a Collector, the stocktaking of goods in the former depot or the reconciliation of records relating to such goods) such fee as the Minister determines having regard to the cost of the services;
- (f) where the former holder of the licence fails to comply with a requirement under paragraph (c) in relation to goods, remove the goods from the former depot to another depot or to another place determined by the Collector; 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 Minister determines having regard to that cost.

"(3) Subject to sub-section (4), where a depot licence has not been renewed and goods remain in the former depot, the Comptroller 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 depot;
- (b) published in the *Gazette*; and
- (c) published in a newspaper circulating in the locality in which the former depot is situated,

inform the owners of goods in the former depot—

- (d) that they are required, within a time specified in the notice or any further time allowed by the Comptroller, to—
 - (i) pay to the Collector duty payable in respect of their goods in the former depot; or
 - (ii) remove their goods in the former depot to another depot 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 the former depot will be sold.

"(4) Where the Comptroller is satisfied that all the goods in a former depot the licence in respect of which has not been renewed are the property of the person who held the

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EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT
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licence, the notice referred to in sub-section (3) need not be published as mentioned in that sub-section but shall be—

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

“(5) Where the owner of goods to which a notice under sub-section (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 Comptroller, 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 depot licence

“109. (1) The Comptroller may, by writing, renew a depot licence on the application, in writing, of the holder of the licence.

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

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

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

Fees for depot licences

“110. (1) Such fees as are prescribed are payable in respect of depot licences.

“(2) Regulations prescribing fees for the purposes of sub-section (1) may provide that fees are not payable in respect of—

- (a) depot licences relating to depots included in a specified class of depots; or
- (b) depot licences held by persons or partnerships included in a specified class of persons or partnerships.

“(3) Regulations prescribing fees for the purposes of sub-section (1) may prescribe—

- (a) annual fees in respect of depot licences;
- (b) fees calculated in accordance with the duration of depot licences; or
- (c) fees the whole or part of which is calculated by reference to transactions relating to goods held or examined in the depot.

“(4) Different fees may be prescribed in relation to depot licences subject to different conditions or in relation to depot licences for depots of different kinds.

Suspension of depot licences

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

- (a) the physical security of the depot is no longer adequate having regard to the matters referred to in paragraph 106 (1) (f);
- (b) the plant and equipment used in the depot are such that the protection of the revenue in relation to goods in the depot is inadequate;

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EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT

ACT 1982—continued

- (c) where the licence is held by a natural person—that person is not a fit and proper person to hold a depot 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 the partnership holding a depot 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 depot 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 depot, is not a fit and proper person so to participate;
- (g) where the licence is held by a company—the company is not a fit and proper company to hold a depot licence;
- (h) a condition to which the licence is subject has not been complied with; or
- (j) a fee payable in respect of the 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 ensuring compliance with the Customs Acts to give the notice.

“(2) The Comptroller 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 latest 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.

“(3) The Comptroller shall, in considering whether a company is a fit and proper company for the purposes of paragraph (1) (g) 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;

NOTES—continued

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT
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- (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 106 (3) (c), (d) and (e)."

"(4) A notice in accordance with this section to the holder of a depot 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 depot.

"(5) A notice in accordance with this section to the holder of a depot licence—

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

NOTES—continued

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT
ACT 1982—continued

- (b) may, if it appears to the Comptroller 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, the licence is suspended on and from the service of the notice.

“(6) A notice in accordance with this section to the holder of a depot licence shall—

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

“(7) Where a depot licence is suspended under this section, the Comptroller—

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

“(8) Subject to sub-section (9), during a period in which a depot licence is suspended under this section, a person shall not use the depot for the breaking of bulk or the holding of goods specified in sub-section 104 (1).

Penalty: \$5,000.

“(9) Notwithstanding sub-section (8), during a period in which a depot licence is suspended under this section, the Collector may—

- (a) permit goods to be placed in the depot;
- (b) permit the removal of goods from the depot, including the removal of goods to another depot;
- (c) by notice in writing to the holder of the licence require him to remove all or specified goods in the depot to another depot, or to a warehouse, approved by the Collector;
- (d) take such control of the depot or all or any goods in the depot 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 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 stocktaking of goods in the depot or the reconciliation of records relating to such goods) such fee as the Minister determines having regard to the cost of the services;
- (f) where the holder of the licence fails to comply with the requirement to remove goods from the depot, remove the goods from the depot to another depot or to another place determined by the Collector; and
- (g) where goods have been removed in accordance with paragraph (f), by notice in writing to the holder of the licence require him to pay to the Customs in respect of the cost of the removal such fee as the Minister determines having regard to that cost.

“(10) If the amount that the holder of a licence is required to pay in accordance with a notice under paragraph (9) (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.

NOTES—continued

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT

ACT 1982—continued

Cancellation of depot licences

"111A. (1) The Comptroller may cancel a depot licence if—

- (a) he is satisfied in relation to the licence as to any of the matters mentioned in paragraphs 111 (1) (a) to (j), inclusive; or
- (b) he is satisfied on any other grounds that cancellation of the licence is necessary for the protection of the revenue or for ensuring compliance with the Customs Acts.

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

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

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

"(4) Subject to sub-section (5), where the Comptroller cancels a depot 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 former depot;
- (b) published in the *Gazette*; and
- (c) published, in each State and internal Territory, in a newspaper circulating generally in that State or Territory,

inform the owners of goods in the former depot—

- (d) that they are required, within a time specified in the notice or any further time allowed by the Comptroller, to—
 - (i) pay to the Collector duty payable in respect of their goods in the former depot; or
 - (ii) remove their goods in the former depot 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 the former depot will be sold.

"(5) Where the Comptroller who has cancelled a depot licence under this section is satisfied that all the goods in the former depot are the property of the person who held the licence, the notice referred to in sub-section (4) need not be published as mentioned in that sub-section but shall be—

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

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

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

Penalty: \$100.

NOTES—continued

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT
ACT 1982—continued

Service of notices

"111B. 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 depot licence, such a notice posted as a letter addressed to the person at the address of the place that is or was the depot shall be deemed to be properly addressed.

Death of licence holder

"111C. If the holder of a depot licence, being a natural person, dies, the licence shall be deemed to be transferred to his legal personal representative.

Obligations of holders of depot licences

"111D. The holder of a depot licence shall—

- (a) stack and arrange, and, if required by a Collector, move, goods in the depot 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 depot and with devices for accurately measuring and weighing such goods;
- (c) if required by an officer, open containers or packages in the depot;
- (d) for the purpose of ensuring the security of goods in the depot, comply with a direction by an officer to move, or not move, particular goods in the depot to another place in the depot;
- (e) 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 depot; and
- (f) provide sufficient labour and materials for use by a Collector in dealing with goods in the depot for the purposes of this Act.

Penalty: \$1,000.

Access to depot

"111E. (1) A Collector may, at any time, gain access to and enter, if necessary by force, any depot and examine any goods in the depot.

"(2) Where a Collector (other than an officer of Customs who is in uniform) proposes to enter a depot under sub-section (1), he shall, if requested to do so by the holder of the depot licence for that depot, produce, for inspection by the holder, written evidence of the fact that he is an officer of Customs and, if he fails to do so, he is not authorized to enter the depot."

54. Sections 232 and 232A of the Principal Act are repealed and the following sections are substituted:

Collusive seizures—penalty

"232. An officer of Customs or an officer of police who—

- (a) makes any collusive seizure;
- (b) delivers up, or makes any agreement to deliver up or not to seize, any goods liable to forfeiture; or
- (c) 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 goods and obtaining any reward for such seizure,

is guilty of an offence punishable upon conviction by a fine not exceeding \$20,000 or imprisonment for a period not exceeding 5 years.

NOTES—continued

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT
ACT 1982—continued

Rescuing goods

"232A. (1) A person who—

- (a) rescues any goods that have been seized; or
- (b) staves, breaks or destroys, or destroys any documents relating to, any goods to prevent the seizure of the goods, the securing of the goods or the proof of any offence,

is guilty of an offence punishable upon conviction by a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years.

"(2) Notwithstanding that an offence against sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence but, where such a court convicts a person of such an offence, the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a term not exceeding 1 year.

Insulting officer

"232B. Any person who uses abusive or insulting language to an officer performing duties under this Act is guilty of an offence punishable upon conviction by a penalty not exceeding \$500."

Review of decisions

66. Section 273GA of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

"(ba) a decision of the Comptroller or the Collector for the purposes of Part VA;"

Penalties

69. (1) The Principal Act is amended as set out in Part I of Schedule 1.

(2) The Principal Act is amended as set out in Part II of Schedule 1.

(3) The Principal Act is amended as set out in Part III of Schedule 1.

Formal amendments

70.

(3) The Principal Act is amended as set out in Part III of Schedule 2.

(4) The Principal Act is amended as set out in Part IV of Schedule 2.

NOTES—continued

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT
ACT 1982—continued

SCHEDULE 1

PENALTIES

PART I

Sub-section 69 (1)

Provision amended	Omit—	Substitute—
Section 33	\$1,000 (wherever occurring)	\$50,000
Paragraph 40AA (4) (a)	\$1,000	\$50,000
Paragraph 50 (4) (a)	\$1,000	\$10,000
Section 59	\$500 (wherever occurring)	\$50,000
Section 60	\$250 (wherever occurring)	\$10,000
Section 62	\$100	\$5,000
Section 63	\$100	\$5,000
Section 65	\$100 (wherever occurring)	\$5,000
Section 66	\$100	\$2,000
Section 67	\$100	\$2,000
Paragraph 71A (4) (a)	\$1,000	\$50,000
Section 73	\$500	\$25,000
Sub-section 86 (6)	\$1,000	\$5,000
Section 90	\$250	\$1,000
Section 100	\$500	\$1,000
Section 101	\$500	\$1,000
Section 102	\$500	\$1,000
Paragraph 112 (2B) (a)	\$1,000	\$10,000
Section 113	\$500	\$1,000
Section 114A	\$200	\$1,000
Section 115	\$500	\$10,000
Section 116	\$100	\$5,000
Section 118	\$500	\$50,000
Section 120	\$250	\$10,000
Section 124	\$250	\$10,000
Section 125	\$250	\$25,000
Paragraph 129 (3) (a)	\$1,000	\$2,000
Section 188	\$250	\$500
Section 191	\$250	\$5,000
Section 192	\$500	\$5,000
Section 197	\$100	\$1,000
Section 197A	\$100	\$1,000
Section 202	\$100	\$1,000
Section 210	\$100	\$1,000
Sub-section 234A (1)	\$100	\$1,000
Sub-section 270 (2)	\$250	\$1,000
Sub-section 275A (2)	\$1,000	\$10,000

PART II

Sub-section 69 (2)

Section 40 of the Principal Act is amended by omitting "\$250" and substituting "\$1,000".

PART III

Sub-section 69 (3)

Section 71 of the Principal Act is amended by omitting "\$250" and substituting "\$1,000".

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NOTES—continued

EXTRACTS FROM CUSTOMS AND EXCISE AMENDMENT
ACT 1982—continued

SCHEDULE 2

* * * * *

PART III

Sub-section 70 (3)

Section 72 of the Principal Act is amended by omitting from sub-section (5) "(b) of sub-section (4)" and substituting "(4) (b)".

PART IV

Sub-section 70 (4)

Provision amended	Omit—	Substitute—
Sub-section 184 (1)	(1) or (2) of section 59	59 (1) or (2)
Sub-section 184 (2)	(4) of section 59	59 (4)

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