REPRINT No. 7

AUSTRALIA

CUSTOMS ACT 1901

Reprinted as at 31 July 1990

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TABLE OF PROVISIONS

TABLE OF PROVISIONS—continued

TABLE OF PROVISIONS—continued

TABLE OF PROVISIONS—continued

TABLE OF PROVISIONS—continued

TABLE OF PROVISIONS—continued

TABLE OF PROVISIONS—continued

TABLE OF PROVISIONS—continued

TABLE OF PROVISIONS—continued

TABLE OF PROVISIONS—continued

TABLE OF PROVISIONS—continued

Section

PART XVII—MISCELLANEOUS

CUSTOMS ACT 1901

An Act relating to the Customs

PART I—INTRODUCTORY

Short title

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

Commencement

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

Interpretation

4.[2] **(1)** In this Act except where otherwise clearly intended:

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

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

"Airport" means an airport appointed under section 15.

"Airport owner" includes the occupier of an airport.

"Airport shop goods" means:

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

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

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

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

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

"Australian seabed" means so much of the seabed adjacent to Australia as is:

(a) within the area comprising:

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

(ii) the Coral Sea area; and

(b) part of:

(i) the continental shelf of Australia;

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

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

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

"Australian waters" means:

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

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

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

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

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

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

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

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

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

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

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

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

"Carriage" includes vehicles and conveyances of all kinds.

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

(a) the territorial sea of Australia; and

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

"Commercial document" , in relation to goods, means a document prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage of goods;

"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.

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

"Comptroller" means the Comptroller-General of Customs.

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

"Continental shelf" has the same meaning as in the 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 resources installation or an Australian sea installation.

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

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

"Days" does not include Sundays or holidays.

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

(a) an acting Deputy Commissioner of Police; and

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

"Documents" includes books.

"Drawback" includes bounty or allowance.

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

"Duty" means duty of Customs.

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

"External place" means:

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

(b) a foreign country;

"*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) a resources installation; or

(b) a sea installation;

"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" means an officer of Customs;

"Officer of Customs" means a person:

(a) employed in the Customs; or

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

and includes;

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

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

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

(a) is in Australian waters; and

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

but does not include an Australian resources installation;

"Overseas sea installation" means a sea installation that:

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

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

but does not include an Australian sea installation;

"Owner" in respect of goods includes any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods.

"Owner" in respect of a ship or aircraft includes every person acting as agent for the owner or to receive freight or other charges payable in respect of the ship or aircraft.

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

"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.

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

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

"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.

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

"Records offence" means:

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

(b) an offence against:

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

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

(iii) section 237 of this Act;

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

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

"Resources installation" means:

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

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

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

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

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

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

(b) a barge, lighter or any other floating vessel;

"Smuggling" means any importation, introduction or exportation or attempted importation, introduction or exportation of goods with intent to defraud the revenue.

"The Customs" means the Australian Customs Service.

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

"This Act" includes all regulations made thereunder.

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

(a) where the 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 trafficable quantity in relation to that substance.

"unmanufactured raw products" means natural or primary products that have not been subjected to an industrial process, other than an ordinary process of primary production, and, without limiting the generality of the foregoing, includes:

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

"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 blended or packaged in a warehouse in compliance with this Act.

"Wharf" means a wharf appointed under section 15.

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

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

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

(3A) A reference in this Act or any other law of the Commonwealth to the tariff classification under which goods are classified is a reference to the heading in Schedule 3 to the *Customs Tariff Act 1987* or such a heading's subheading:

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

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

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

(a) a heading in Schedule 3 to the *Customs Tariff Act 1987* may be referred to by the word "heading" followed by the digits with which the heading begins;

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

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

(d) an item in Schedule 5 to that Act may be referred to by the word "item" followed by the number with which the item begins; and

(e) a subitem in Schedule 5 to that Act may be referred to by the word "subitem" followed by the number and letter with which the subitem begins.

(3C) Where the word "Free" is set out in section 22, 23 or 25 of the *Customs Tariff Act 1987* or in the third column of Schedule 3, 4 or 5 to that Act, that word shall, unless the contrary intention appears, be deemed, for the purposes of this Act and any other law of the Commonwealth, to be a rate of duty.

(3D) Any words, or words and figures, set out in the third column of Schedule 3, 4 or 5 to the *Customs Tariff Act 1987*, being words, or words and figures, that enable the duty to be ascertained in respect of goods shall, unless the contrary intention appears, be deemed for the purposes of this Act or any other law of the Commonwealth, to be a rate of duty.

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

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

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

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

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

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

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

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

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

(i) is able to float or be floated;

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

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

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

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

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

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

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

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

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

(a) the installation:

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

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

(b) the installation:

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

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

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

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

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

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

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

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

(b) has been in a particular locality:

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

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

for:

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

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

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

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

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

for less than:

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

(d) in any other case—5 days;

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

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

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

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

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

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

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

(b) has been in a particular locality:

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

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

for:

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

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

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

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

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

for less than:

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

(d) in any other case—5 days;

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

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

Approved forms

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

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

Penalties at foot of sections or subsections

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

(a) at the foot of a section of this Act; or

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

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

PART II—ADMINISTRATION

Attachment of overseas resources installations

5A. (1) A person shall not, without the permission of the Comptroller given under subsection (2), cause an overseas resources 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 resources installation to be attached to the Australian seabed, give the person permission, subject to such conditions (if any) as are specified in the notice, to cause that installation to be so attached.

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

Penalty: $10,000.

(4) Where the Comptroller has, under subsection (2), given a person permission to cause an overseas resources 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 subsection (2), conditions to which a permission given under that subsection may be subject include:

(a) conditions relating to matters of quarantine; and

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

Installation of overseas sea installations

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

Penalty: $50,000.

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

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

Penalty: $10,000.

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

(a) revoke the permission;

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

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

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

(a) conditions relating to matters of quarantine; and

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

Certain installations to be part of Australia

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

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

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

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

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

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

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

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

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

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

General administration of Act

7. The Comptroller has the general administration of this Act.

Collectors of Customs

8. **(1)** In this Act:

(a) a reference to the Collector, or to a Collector, shall be construed as a reference to:

(i) any principal officer of Customs; or

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

(b) a reference to the Collector of Customs, or to a Collector of Customs, for a State or Territory shall be construed as a reference to the principal officer of Customs for that State or Territory or for a part of that State or Territory.

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

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

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

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

(ii) the Coral Sea area.

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

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

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

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

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

Delegation

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

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

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

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

Arrangements with States and the Northern Territory

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

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

(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 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 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 Comptroller.

(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 Comptroller directs.

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

(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 etc.

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

Appointment of sufferance wharfs etc.

17. The Comptroller 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 Comptroller 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.

Declaration by youths

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

State inspection laws

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

Working days and hours etc.

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

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

(3) Where:

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

(i) inspecting or examining any goods; or

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

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

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

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

PART III—CUSTOMS CONTROL EXAMINATION 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, being protected objects, or being goods the exportation of which is subject to compliance with any condition or restriction under any Act or regulation—from the time the goods are made or prepared in, or are brought into, any prescribed place for export, until their exportation to parts beyond the seas.

Exemptions under Torres Strait Treaty

30A. **(1)** In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Where:

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

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

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

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

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

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

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

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

(5) The Comptroller may, in his discretion, after receiving an application under subsection (4) in relation to a proposed voyage by a ship or a proposed flight by an aircraft, by notice in writing given to the person who made the application, exempt, subject to such conditions (if any) as are specified in the notice, from so many of the provisions of the Customs Acts as are specified in the notice:

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

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

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

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

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

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

(6) Where:

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

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

the Customs Acts (including the provisions referred to in paragraph (a)) apply in relation to the arrival of that ship, aircraft or person at, or the taking of those goods to, the place referred to in paragraph (b) as if that ship, aircraft or person had arrived at the place, or those goods had been taken to that place, as the case may be, from 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. (1) Except as authorized by this Act, a person shall not move, alter or interfere with goods that are subject to the control of the Customs.

Penalty: $50,000.

(2) If a person who commits an offence against subsection (1) does the act that constitutes the offence:

(a) on behalf of another person of whom he is an employee; or

(b) at the direction or with the consent or agreement (whether express or implied) of another person;

that other person commits an offence and is punishable, on conviction, by a fine not exceeding $50,000.

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

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

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

Resources installations subject to the control of the Customs

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

Penalty: $50,000.

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

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

Penalty: $10,000.

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

(a) suspend or revoke the permission;

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

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

Sea installations subject to the control of the Customs

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

Penalty: $50,000.

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

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

Penalty: $10,000.

(4) Where the Comptroller has, under subsection (2), given a person permission to engage in any activities in relation to an Australian sea installation, the Comptroller 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 subsection (1), (1A), or (1B) shall be a debt due to the Commonwealth and may be sued for and recovered in a court of competent jurisdiction by proceedings in the name of the Collector.

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

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

(a) any other provision of this Act; or

(b) a security given under this Act.

Entry of goods

36. **(1)** Subject to subsection (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 subsection (1) in respect of goods may be given to a Collector other than an appropriate Collector.

(2A) The regulations may, in respect of goods required or eligible to be entered:

(a) without otherwise limiting the manner in which the entry is required or eligible to be made—require that the entry be able to be processed by a specified computer system used by the Customs for the purpose of handling such entries; and

(b) require that the person making the entry pay a specified fee calculated:

  (i) if the person has computer access to the Customs computer system referred to in paragraph (a)—in respect of the provision of access to the Customs computer system; and

(ii) otherwise—in respect of assistance given in preparing the entry for use in, or the supply of computer facilities for access to, the Customs computer system referred to in paragraph (a).

(2B) The regulations may exempt, in whole or in part, persons entering classes of goods that are specified in the regulations from liability to pay fees imposed under subsection (2A).

(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 arrived 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 and 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 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 subsection (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 subsection (1); or

(ii) has been withdrawn under subsection (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 subsection, 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 etc.

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 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 subsection (2) any questions relating to the goods.

(4) A Collector may require from the owner of any goods referred to in subsection (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 subsection (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 subsection (3) in respect of the goods; or

(c) the owner of goods referred to in subsection (2) has been required under subsection (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.

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.

(1A) Authority under this section to deal with goods shall, unless a Collector has determined under subsection (1B) that this subsection does not apply in relation to the goods, be expressed to be subject to the condition that an officer of Customs may, at any time within 5 years after the goods are entered for a particular purpose, require verification of information that was supplied to the Collector for the purposes of their entry for that purpose, and may, for the purpose of that verification, exercise such of the powers conferred under section 214AA as the officer considers necessary.

(1B) Where a Collector is satisfied that the information given to him or her for the purposes of an entry of goods will not require verification of that information after the goods are entered, he or she may determine, in writing, that subsection (1A) does not apply in relation to the goods.

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

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

Goods to be dealt with according to entry

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

Penalty: $1,000.

Permission to remove goods subject to Customs control without entry

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

(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 subsection (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 subsection (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 $50,000; 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 subsection (1) or (2), goods are removed to a place other than a warehouse, a Collector may, at any time before the goods cease to be subject to the control of the Customs, direct that the goods be moved from that place to a warehouse specified by him and, if default is made in complying with the direction, the Collector may cause the goods to be moved to that warehouse or to any other warehouse.

(6) A Collector has lien on goods which he has caused to be moved to a warehouse under the last preceding subsection 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 subsection (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 subsection (1) to require and take a security includes the right to require and take securities for payment of any penalty that a person may become liable to pay to the Commonwealth under the *Customs Undertakings (Penalties) Act 1981*.

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

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

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

(1C) Where an undertaking is given and accepted under subsection 269TG (4) or 269TJ (3) in respect of goods to which an application under section 269TB relates and that undertaking is subsequently breached, then, despite subsection (1B), the Customs may forthwith require and take securities in respect of any duty that may be payable under the *Customs Tariff (Anti-Dumping) Act 1975* on the goods the subject of the application or on like goods imported into

Australia before that time even though the Comptroller has not made a preliminary finding of the kind referred to in paragraph (1B) (a) in respect of the goods the subject of the application.

(2) The right of the Customs under subsection (1) to require and take securities includes the right to require and take a security for a purpose or purposes for which security may be taken under that subsection and for a purpose or purposes for which security may be taken under section 16 of the *Excise Act 1901-1957* and the succeeding provisions of this Part apply to and in relation to such a security in the same manner as they apply to and in relation to any other security required and taken under subsection (1).

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

Form of security

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

General bonds may be given

44. When security is required for any particular purpose security may by the authority of the Comptroller be accepted to cover all transactions for such time and for such amounts 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 taken in respect of any duty that may become payable on goods under section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act 1975*, being a security taken before the publication by the Minister of a notice declaring that section to apply to those goods, shall be cancelled before the expiration of the prescribed period after the date of the security.

(3) In subsection (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.

(4) Where:

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

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

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

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

New sureties

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

Form of Customs security

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

Effect of Customs security

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

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

(a) an extension of time or other concession;

(b) the Customs having consented to, or acquiesced in, a previous non-compliance with the condition; or

(c) the Collector having failed to bring suit against the subscribers upon the occurrence of a previous non-compliance with the condition.

PART IV—THE IMPORTATION OF GOODS

Division 1A—Preliminary

Importation

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

(1) The ship or aircraft may be boarded.

(2) The cargo shall be reported.

(3) The goods shall be entered unshipped and may be examined.

Ships and aircraft deemed to be imported

49A. (1) Where:

(a) a ship or an aircraft has entered Australia; and

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

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

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

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

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

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

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

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

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

(7) Where:

(a) a Collector has served a notice under subsection (1) in respect of a ship or aircraft;

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

(c) the notice has not been revoked under subsection (3);

(d) the ship or aircraft has remained in Australia throughout the period specified in the notice, or, if that period has been extended under subsection (2), that period as extended; and

(e) an entry has not been made in respect of the ship or aircraft during that period or that period as extended, as the case requires;

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

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

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

Installations and goods deemed to be imported

49B. **(1)** Where:

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

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

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

(2) Where:

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

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

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

Division 1—Prohibited Imports

Prohibition of the importation of goods

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

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

(a) by prohibiting the importation of goods absolutely;

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

(b) by prohibiting the importation of goods from a specified place; or

(c) by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

(3) Without limiting the generality of paragraph (2) (c), the regulations:

(a) may provide that the importation of the goods is prohibited unless a licence, permission, consent or approval to import the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations; and

(b) may make provision for and in relation to:

(i) the assignment of licences or permissions so granted or of licences or permissions included in a prescribed class of licences or permissions so granted;

(ii) the granting of a licence or permission to import goods subject to compliance with conditions or requirements, either before or after the importation of the goods, by the holder of the licence or permission at the time the goods are imported;

(iii) the surrender of a licence or permission to import goods and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to import goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to import goods; and

(iv) the revocation of a licence or permission that is granted subject to a condition or requirement to be complied with by a person for a failure by the person to comply with the condition or requirement, whether or not the person is charged with an offence against subsection (4) in respect of the failure.

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

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

(a) if the licence or permission relates to goods that are not narcotic goods—by a fine not exceeding $10,000; or

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

Prohibited imports

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

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

Division 2—The Boarding of Ships and Aircraft

Ships and aircraft to enter ports or airports

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

Penalty: $50,000.

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

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

Penalty: $10,000.

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

(a) revoke the permission;

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

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

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

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

Direct journeys between sea installations and external places prohibited

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

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

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

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

then:

(c) that person;

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

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

are each guilty of an offence against this section.

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

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

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

then:

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

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

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

are each guilty of an offence against this section.

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

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

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

then:

(c) that person;

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

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

are each guilty of an offence against this section.

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

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

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

then:

(c) the person who sent the goods;

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

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

are each guilty of an offence against this section.

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

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

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

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

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

(8) For the purposes of this section:

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

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

Penalty: $10,000.

58B.[2] * * * * * *

Ships and aircraft to obey signals

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

(a) any Australian ship; or

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

to permit his ship to be boarded for the purposes of this Act.

(2) The person in command of any aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is or are displayed may, by means of an international signal code or other internationally recognized means of communication between an aircraft and a ship, request the master of:

(a) any Australian ship; or

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

to permit his ship to be boarded for the purposes of this Act.

(3) The master of a ship shall not, without reasonable excuse, refuse or fail to comply with a request made of him in pursuance of subsection (1) or (2).

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

(a) any Australian aircraft; or

(b) any aircraft flying over:

(i) Australia;

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

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

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

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

(5) The pilot of an aircraft shall not, without reasonable excuse, refuse or fail to comply with a request made of him in pursuance of subsection (4).

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

(7) In this section:

"Australian aircraft" has the same meaning as it has in the *Civil Aviation Act 1988*;

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

Penalty: $50,000.

Boarding stations

60. **(1)** The master of every ship from 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: $10,000.

(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: $10,000.

(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: $10,000.

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

Facility for boarding

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

Penalty: $5,000.

Ships to come quickly to place of unlading

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

Penalty: $5,000.

Ship or aircraft not to be moved without authority

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

Penalty: $5,000.

Division 3—The Report of the Cargo

Report of cargo

64. **(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 subsection (2).

Penalty: $1,000.

(4) In this section:

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

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

Master or pilot of wrecked ship or aircraft to report

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

Penalty: $5,000.

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

Penalty: $5,000.

Goods derelict to be delivered to officer

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

Penalty: $2,000.

Interference with derelict goods

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

Penalty: $2,000.

Division 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 transhipment.

(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. 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: $1,000.

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 subsection 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. **(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 subsection (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 subsection 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 subsection (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 subsection (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 $50,000; 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 subsection (6), a permission under subsection (1) does not authorize the delivery of goods in respect of which a quota order under subsection 132B (3) is in force at any time if the Customs would have the right under subsection 132B (8), if the goods were entered for home consumption under subsection 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 subsection (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. **(1)** Where:

(a) imported goods are required to be entered; and

(b) an entry is not made in respect of the goods within such period commencing on the importation of the goods as is prescribed, or any further period allowed by a Collector;

a Collector may cause or permit the goods to be removed to a warehouse or such other place of security as the Collector directs or permits.

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

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

(4) Where:

(a) goods (other than goods to which subsection (2) applies) have been, or may be, removed under subsection (1); and

(b) all things that are required to be done to enable authority to deal with the goods to be given under section 39, including the making of an entry in respect of the goods, are not done within:

(i) if the goods have been removed—such period as is prescribed commencing on the removal of the goods; or

(ii) if the goods have not been removed—such period as is prescribed commencing on the expiration of the period applicable under paragraph (1) (b) in relation to the goods;

a Collector may sell the goods.

(5) A period prescribed for the purposes of subsection (1) or subparagraph (4) (b) (i) or (ii) may be a period prescribed in relation to all goods or in relation to goods in a class of goods.

Breaking bulk

73. (1) Subject to subsection (3), except with the permission of a Collector, a person shall not break the bulk cargo of a ship arriving in, or on a voyage to, Australia while the ship is within 12 nautical miles of the base line of the territorial sea of Australia or within 12 nautical miles of the coast of an island forming part of Australia.

Penalty: $25,000.

(2) Subject to subsection (3), except with the permission of a Collector, a person shall not break the bulk cargo of an aircraft arriving in, or on a flight to, Australia while the aircraft is:

(a) flying over Australia;

(b) in, or flying over, the waters within 12 nautical miles of the base line of the territorial seas of Australia; or

(c) in, or flying over, the waters within 12 nautical miles of the coast of an island forming part of Australia.

Penalty: $25,000.

(3) Subsections (1) and (2) do not apply in respect of goods authority to deal with which has been given under section 39.

Authority for unshipment

74. 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 etc.

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

Repacking on wharf

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

PART V—WAREHOUSES

Interpretation

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

"place" includes an area, a building and a part of a building;

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

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

(2) A reference in this Part to the 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 blending or packaging, processing, trading or other activities specified in the licence to be carried on in the warehouse.

Applications for warehouse licences

80. An application for a warehouse licence shall:

(a) be in writing;

(b) contain a description of the place in relation to which the licence is sought;

(c) specify the kinds of goods that would be warehoused in that place if it were a warehouse;

(d) set out the name and address of each person whom the 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

(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 Comptroller 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 Comptroller determines having regard to that cost.

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

(a) served, either personally or by post, on that person; or

(b) served personally on a person who, at the time of the expiration of the licence, apparently participated in the management or control of the former warehouse.

(5) Where the owner of goods to which a notice under subsection (3) applies fails to comply with the requirements of the notice within the time specified in the notice or any further time allowed by the 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 subsection (1) may prescribe:

(a) annual fees in respect of warehouse licences;

(b) fees calculated in accordance with the duration of warehouse licences;

(c) a fee for each transaction, or each transaction in a class of transactions, involving the movement of goods into or out of the warehouse to which a warehouse licence relates; and

(d) a fee calculated by reference to the volume or value of transactions, or of a specific class of transactions, relating to goods in the warehouse to which a warehouse licence relates.

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

Suspension of warehouse licences

86. **(1)** The 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.

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

Penalty: $5,000.

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

(a) permit goods to be placed in the warehouse;

(b) permit a process to be carried out in the warehouse;

(c) permit the removal of goods from the warehouse, including the removal of goods to another warehouse;

(d) by notice in a prescribed manner to the owner of goods in the warehouse, require him to remove his goods to another warehouse approved by the Collector;

(e) take such control of the warehouse or all or any goods in the warehouse as may be necessary for the protection of the revenue or for ensuring compliance with the Customs Acts; and

(f) by notice in writing to the holder of the licence, require him to pay to the Customs in respect of the services of officers required as the result of the suspension, including services relating to the enforcement of the suspension, the supervision of activities in relation to the warehouse permitted by a Collector, the stocktaking of goods in the warehouse or the reconciliation of records relating to such goods, such fee as the Comptroller 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 subsection 86 (1); or

(b) he is satisfied on any other grounds that cancellation of the licence is necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts.

(2) The Comptroller shall cancel a warehouse licence under subsection (1) by notice in writing:

(a) served, either personally or by post, on the holder of the licence; or

(b) served personally on a person who, at the time of service, apparently participates in the management or control of the warehouse.

(4) Subject to subsection (5), where the 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 subsection (4) need not be published as mentioned in that subsection but shall be:

(a) served, either personally or by post, on that person; or

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

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

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

Penalty: $100.

Service of notices

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

Death of licence holder

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

Obligations of holders of warehouse licences

90. (1) The holder of a warehouse licence shall:

(a) stack and arrange goods in the warehouse so that officers have reasonable access to, and are able to examine, the goods;

(b) provide officers with adequate space and facilities for the examination of goods in the warehouse and with devices for accurately measuring and weighing such goods;

(c) if required by a Collector, provide adequate office space and furniture and a telephone service, for the official use of officers performing duties at the warehouse; and

(d) provide sufficient labour and materials for use by a Collector in dealing with goods in the warehouse for the purposes of this Act.

Penalty: $1,000.

(2) A requirement imposed on the holder of a warehouse licence under paragraph (1) (c) shall be set out in a notice in writing served, either personally or by post, on the holder of the licence.

Access to warehouses

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

Repacking in warehouse

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

Regauging etc. of goods

93. Where:

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

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

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

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

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

and duty in respect of the goods is payable accordingly.

Goods not worth duty may be destroyed

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

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

Revaluation

95. Where a Collector is satisfied that warehoused goods that have been valued for the purposes of this Act in accordance with Division 2 of Part VIII have deteriorated in value as the result of accidental damage, the Collector may, if requested by the owner of the goods to do so, cancel that valuation and, for the purposes of this Act and in accordance with Division 2 of Part VIII revalue those goods as at the time of the revaluation.

Arrears of warehouse charges

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

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

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

a Collector may sell the goods.

(2) In this section, **"member of the crew"** includes:

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

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

Outwards duty free shops

96A. (1) In this section:

"international flight" means a flight, whether direct or indirect, by an aircraft between a place in Australia from which the aircraft takes off and a place outside Australia at which the aircraft lands or is intended to land;

"outwards duty free shop" means a warehouse in respect of which the relevant warehouse licence authorises the sale in the warehouse of goods to relevant travellers;

"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;

"proprietor" , in relation to an outwards duty free shop, means the holder of the warehouse licence that relates to the outwards duty free shop;

"relevant traveller" means a person 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 subsection (3), for goods that are specified in the permission and are sold to a relevant traveller in an outwards duty free shop that is specified in the permission to be:

(a) delivered to the relevant traveller personally for export by him when making the international flight 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 subsection (13), the permission is authority for such goods to be so delivered and so exported.

(3) Permission under subsection (2) is given in accordance with this subsection if it is in writing and is delivered to the proprietor of the outwards duty free shop to which the permission relates.

(4) Permission under subsection (2) may relate to particular goods, all goods, goods included in a specified class or classes of goods or goods other than goods included in a specified class or classes of goods.

(5) Without limiting the matters that may be prescribed in regulations referred to in subsection (2), those regulations:

(a) may prescribe circumstances in which permission under that subsection may be given;

(b) may prescribe matters to be taken into account by a Collector when deciding whether to give permission under that subsection; and

(c) may prescribe conditions to which a permission under that subsection is to be subject.

(6) A Collector may, when giving permission under subsection (2) or at any time while a permission under that subsection is in force, impose conditions to which the permission is to be subject, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.

(7) Without limiting the generality of paragraph (5) (c) or subsection (6), a condition referred to in that paragraph or that subsection to which a permission is to be subject may be:

(a) a condition to be complied with by the proprietor of the outwards duty free shop to which the permission relates or by relevant travellers to whom goods to which the permission relates are sold;

(b) a condition that the permission only applies to sales to relevant travellers who comply with a prescribed requirement or requirements, which may be, or include, a requirement that relevant travellers produce to the proprietor of the outwards duty free shop to which the permission relates or to a servant or agent of that proprietor a ticket or other document, being a document approved by a Collector for the purposes of this paragraph, showing that the relevant traveller is entitled to make the international flight in relation to which he is a relevant traveller; or

(c) a condition that the proprietor of the outwards duty free shop to which the permission relates will keep records specified in the regulations and will notify a Collector of all sales made by him to which the permission applies.

(8) A condition imposed in respect of a permission under subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition takes effect when notice, in writing, of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the proprietor of the outwards duty free shop to which it relates, or at such later time (if any) as is specified in the notice, but does not have effect in relation to any goods delivered to a relevant traveller before the notice was served.

(9) A condition imposed in respect of a permission under paragraph (5) (c) or subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of a condition under subsection (6) may relate to all goods to which the permission relates or to particular goods to which the permission relates and may apply either generally or in particular circumstances.

(10) A permission under subsection (2) is subject to:

(a) the condition that the proprietor of the outwards duty free shop to which the permission relates will ensure that relevant travellers to whom goods are delivered in accordance with the permission are aware of any conditions of the permission with which they are required to comply; and

(b) the condition that that proprietor will provide a Collector with proof, in a prescribed way and within a prescribed time, of the export of goods delivered to a relevant traveller in accordance with the permission.

(11) If a person who is required to comply with a condition imposed in respect of a permission under subsection (2) fails to comply with the condition, he is guilty of an offence against this Act punishable upon conviction by a penalty not exceeding $5,000.

(12) Where the proprietor of an outwards duty free shop to which a permission under subsection (2) relates does not produce the proof required by paragraph (10) (b) that goods delivered by him to a relevant traveller in accordance with the permission have been exported by that traveller, the goods shall be deemed to have been entered, and delivered, for home consumption by the proprietor, as owner of the goods, on the day on which the goods were delivered to that traveller.

(13) A Collector may, in accordance with the regulations, revoke a permission given under subsection (2) in relation to the sale of goods occurring after the revocation.

(14) Where a Collector makes a decision under subsection (2) refusing to give permission to the proprietor of an outwards duty free shop or under subsection (13) revoking a permission given under subsection (2), he shall cause to be served, either personally or by post, on the proprietor of the shop, a notice in writing setting out the Collector's findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

Inwards duty free shops

96B. (1) In this section:

"international flight" means a flight, whether direct or indirect, by an aircraft between a place outside Australia from which the aircraft took off and a place in Australia at which the aircraft landed;

"inwards duty free shop" means a warehouse in respect of which the relevant warehouse licence authorises the sale in the warehouse of airport shop goods to relevant travellers;

"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;

"proprietor" , in relation to an inwards duty free shop, means the holder of the warehouse licence that relates to the inwards duty free shop;

"relevant traveller" means a person who:

(a) has arrived in Australia on an international flight, whether as a passenger on, or as the pilot or a member of the crew of, an aircraft; and

(b) has not been questioned, for the purposes of this Act, by an officer of Customs in respect of goods carried on that flight.

(2) A warehouse licence is not to authorise the sale in the warehouse of airport shop goods to relevant travellers unless the warehouse:

(a) is situated at an airport; and

(b) is so located that passengers on international flights who arrive at that airport would normally have access to the warehouse before being questioned for the purposes of this Act by officers of Customs.

(3) Subject to the regulations (if any), a Collector may give permission, in accordance with subsection (4), for airport shop goods that are specified in the permission and are sold to a relevant traveller in an inwards duty free shop that is specified in the permission to be:

(a) delivered to the relevant traveller; and

(b) taken by the relevant traveller for reporting to an officer of Customs doing duty in relation to clearance through Customs of the personal baggage of the relevant traveller.

(4) Permission under subsection (3) is given in accordance with this subsection if it is in writing and is delivered to the proprietor of the inwards duty free shop to which the permission relates.

(5) Without limiting the matters that may be prescribed in regulations referred to in subsection (3), those regulations:

(a) may prescribe circumstances in which permission under that subsection may be given;

(b) may prescribe matters to be taken into account by a Collector when deciding whether to give permission under that subsection; and

(c) may prescribe conditions to which a permission under that subsection is to be subject.

(6) A Collector may, when giving permission under subsection (3) or at any time while a permission under that subsection is in force, impose conditions to which the permission is to be subject, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts, and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.

(7) Without limiting the generality of paragraph (5) (c) or subsection (6), a condition referred to in that paragraph or that subsection to which a permission is to be subject may be:

(a) a condition to be complied with by the proprietor of the inwards duty free shop to which the permission relates or by relevant travellers to whom goods to which the permission relates are sold; or

(b) a condition that the proprietor of the inwards duty free shop to which the permission relates will keep records specified in the regulations.

(8) A condition imposed in respect of a permission under subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition takes effect when notice in writing of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the proprietor of the inwards duty free shop to which it relates, or at such later time (if any) as is specified in the notice, but does not have effect in relation to any goods delivered to a relevant traveller before the notice was served.

(9) A condition imposed in respect of a permission under paragraph (5) (c) or subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of a condition under subsection (6) may relate to all goods to which the permission relates or to particular goods to which the permission relates and may apply either generally or in particular circumstances.

(10) A permission under subsection (3) is subject to the condition that the proprietor of the inwards duty free shop to which the permission relates will ensure that relevant travellers to whom goods are delivered in accordance with the permission are aware of any conditions of the permission with which they are required to comply.

(11) If a person who is required to comply with a condition imposed in respect of a permission under subsection (3) fails to comply with the condition, the person is guilty of an offence against this Act punishable upon conviction by a fine not exceeding $5,000.

(12) A Collector may, in accordance with the regulations, revoke a permission given under subsection (3) in relation to the sale of goods occurring after the revocation.

(13) Where a Collector makes a decision under subsection (3) refusing to give permission to the proprietor of an inwards duty free shop or a decision under subsection (12) revoking a permission given under subsection (3), the Collector shall cause to be served, either personally or by post, on the proprietor of the shop, a notice in writing setting out the Collector's findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

Goods for public exhibition

97. (1) Subject to subsection (3), a Collector may, by writing signed by him, grant to the owner of warehoused goods permission to take those goods out of the warehouse for the purpose of public exhibition, testing or a similar purpose without entering the goods for home consumption.

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

(3) Permission under subsection (1) for the taking of warehoused goods out of a warehouse shall not be granted unless security has been given to the satisfaction of the Collector for the payment, in the event of the goods not being returned to the warehouse before the expiration of the period specified in the permission, of the duty that would have been payable if the goods had been entered for home consumption on the day on which they were taken out of the warehouse.

Goods blended or packaged in warehouse

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

Entry of warehoused goods

99. (1) Warehoused goods may be entered:

(a) for home consumption; or

(b) for export.

(2) Subject to sections 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.

(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.

Constructive warehousing

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

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

(a) at the time of lodging the further entry, give the Collector particulars of the entry for warehousing; and

(b) as soon as practicable, give particulars of the further entry to the holder of the warehouse licence relating to the warehouse in which the goods were intended to be warehoused in accordance with the entry for warehousing.

Penalty: $1,000.

Delivery of warehousing authority

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

Penalty: $1,000.

Holder of licence to inform Collector of certain matters

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

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

Penalty: $1,000.

PART VA—SPECIAL PROVISIONS RELATING TO SPIRITS

Interpretation

103. In this Part:

"bulk container" means a container that has the capacity to have packaged in it more than 2 litres of spirit;

"container" means any article capable of holding liquids;

"spirit" means goods described in a sub-item between sub-items 2 (A) and 2 (H), inclusive, of the Schedule to the *Excise Tariff Act 1921*.

Spirit imported in bulk must be entered for warehousing or transhipment

104. All spirit imported into Australia in bulk containers must initially either be entered for warehousing under paragraph 68 (1) (b) or for transhipment under paragraph 68 (1) (c).

Certain spirit not to be entered for home consumption in bulk containers without Comptroller's approval

105. **(1)** Spirit that has been imported into Australia in bulk containers and entered for warehousing must not be entered for home consumption unless:

(a) the spirit has been repackaged in containers other than bulk containers; or

(b) the Comptroller, by notice in writing, permits the spirit to be entered for home consumption packaged in bulk containers.

(2) The Comptroller must not permit spirit that has been imported into Australia in bulk containers and initially entered for warehousing to be subsequently entered for home consumption purposes in bulk containers unless:

(a) the containers have a capacity of not more than 20 litres or such other volume as is from time to time prescribed; and

(b) the Comptroller is satisfied that the spirit will not be repackaged in any other container for the purposes of retail sale.

PART VI—THE EXPORTATION OF GOODS

Prohibited exports

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

(2) The power conferred by subsection (1) may be exercised:

(a) by prohibiting the exportation of goods absolutely;

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

(b) by prohibiting the exportation of goods to a specified place; or

(c) by prohibiting the exportation of goods unless specified conditions or restrictions are complied with.

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

(a) may provide that the exportation of the goods is prohibited unless a licence, permission, consent or approval to export the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations; and

(b) may make provision for and in relation to:

(i) the assignment of licences or permissions so granted or of licences or permissions included in a prescribed class of licences or permissions so granted;

(ii) the granting of a licence or permission to export goods subject to compliance with conditions or requirements, either before or after the exportation of the goods, by the holder of the licence or permission at the time the goods are exported;

(iii) the surrender of a licence or permission to export goods and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to export goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to export goods; and

(iv) the revocation of a licence or permission that is granted subject to a condition or requirement to be complied with by a person for failure by the person to comply with the condition or requirement, whether or not the person is charged with an offence against subsection (2B) in respect of the failure.

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

(a) if the licence or permission relates to goods that are not narcotic goods—by a fine not exceeding $10,000; or

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

(2AB) It is a condition of any licence or permission to export goods, being a licence or permission granted under paragraph (2) (c) by the Minister for Defence or an authorised person within the meaning of subregulation 13B (1) or 13E (1) of the Customs (Prohibited Exports) Regulations after the commencement of this subsection, that the Minister for Defence may, at any time, by notice:

(a) published:

(i) in the *Gazette*; and

(ii) in each State and internal Territory, in a newspaper circulating throughout that State or Territory; and

(b) in writing given to the holder of the licence or permission;

inform the holder that, with effect from a day specified in the notice, all goods to which the licence or permission relates, or such kinds of those goods as are specified in the notice, shall not be exported to a specified place because in the opinion of the Minister for Defence:

(c) a situation in that place; or

(d) a situation in another place to which there is a reasonable likelihood that such goods will be re-exported from that specified place;

makes the exportation of such goods from Australia contrary to the national interest, and, where the Minister for Defence gives such a notice, the authority of the holder to export such goods to that specified place shall be taken to have been withdrawn until the Minister for Defence, by further notice in writing given to the holder, revokes the original notice.

(2AC) The day specified in a notice under subsection (2AB) shall be a day not earlier than the day on which the notice is published in the *Gazette* under subparagraph (2AB) (a) (i).

(2AD) Any failure to comply with the requirements of paragraph (2AB) (b) in relation to a notice under subsection (2AB) does not affect the validity of the notice.

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

Size of exporting vessel

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

Penalty: $1,000.

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) Subsection (1) does not apply in relation to:

(a) goods that are excisable goods within the meaning of the *Excise Act 1901* and Excise duty on which has not been paid;

(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. **(1)** The Comptroller 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 subsection (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: $1,000.

Authority for exportation of goods to be given

115. 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.

Penalty: $10,000.

Short-shipped goods

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

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

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

Penalty: $5,000.

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

Penalty: $50,000.

Requisites for obtaining 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 subsection (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 Comptroller for a Certificate of Clearance, and the decision of the Comptroller upon the application shall be final and conclusive.

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

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

Shipment of goods

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

(a) goods which are specified or referred to in the Outward Manifest;

(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: $10,000.

Time of clearance

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

Ship to bring to and aircraft to stop at boarding stations

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

Penalty: $500.

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

Penalty: $500.

Master or pilot to account for missing goods

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

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

Penalty: $10,000.

Goods exported to be landed at proper destination

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

Penalty: $25,000.

Certificate of landing

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

Export of installations

126A. **(1)** Where an installation ceases to be part of Australia, the installation and any goods on the installation at the time when it ceases to be part of Australia shall, for the purposes of the Customs Acts, be taken to have been exported from Australia.

(2) Where:

(a) a resources installation is taken from a place in Australia into Australian waters for the purpose of becoming attached to the Australian seabed; or

(b) a sea installation is taken from a place in Australia into an adjacent area or into a coastal area for the purpose of being installed in that area;

the installation and any goods on the installation shall not be taken, for the purposes of the Customs Acts, to have been exported from Australia.

Export of goods from installations

126B. For the purposes of the Customs Acts, where goods are taken from an installation that is deemed to be part of Australia under section 5C for the purpose of being taken to parts beyond the seas, whether directly or indirectly, the goods shall be deemed to have been exported from Australia at the time when they are so taken from the installation.

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.

Unshipment of ships' and aircraft's stores

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

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

Ships' and aircraft's stores not to be taken on board without approval

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

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

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

(a) he is guilty of an offence against this Act punishable, upon conviction, by a penalty not exceeding $2,000; and
(b) if he failed to comply with a requirement before the goods were placed on board the ship or aircraft—the removal of the goods for the purpose of placing the goods on board the ship or aircraft shall, for the purposes of paragraph 229 (1) (g), be deemed not to have been authorized by this Act.

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

Ship's and aircraft's stores exempt from duty

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

Entry not required for ship's or aircraft's stores

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

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

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

(2) The owner of a ship, or if so directed by an officer, the master of a ship, shall:

(a) whenever so directed by an officer, give to a Collector a return, in accordance with a form made available by the Collector, relating to the ship's stores of the ship and to goods taken on board the ship as ship's stores; and

(b) immediately before the departure of the ship from Australia, give to a Collector a return, in accordance with the prescribed form, relating to drugs that are prohibited imports and:

(i) are ship's stores of the ship; or

(ii) have been taken on board the ship as ship's stores.

(2A) The owner of an aircraft, or, if so directed by an officer, the pilot of an aircraft, shall:

(a) whenever so directed by an officer, give to a Collector particulars of:

(i) the prescribed aircraft's stores of the aircraft; and

(ii) goods taken on board the aircraft as prescribed aircraft's stores; and

(b) immediately before the departure of the aircraft from Australia, give to a Collector a return, in accordance with the prescribed form, relating to drugs that are prohibited imports and:

(i) are aircraft's stores of the aircraft; or

(ii) have been taken on board the aircraft as aircraft's stores.

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

(4) In subsection (2A), **"prescribed aircraft's stores"** means prescribed aircraft's stores within the meaning of section 129.

Interpretation

130C. In this Part:

"aircraft" does not include:

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

(b) an aircraft that is currently engaged in making international flights but is about to make a flight other than an international flight;

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

"international flight" , in relation to an aircraft, means a flight, whether direct or indirect, between:

(a) a place in Australia from which the aircraft takes off and a place outside Australia at which the aircraft lands or is intended to land; or

(b) a place outside Australia from which the aircraft takes off and a place in Australia at which the aircraft lands;

"international voyage" , in relation to a ship, means a voyage, whether direct or indirect, between a place in Australia and a place outside Australia;

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

(a) is registered in Australia; and

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

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

131AA.[2] * * * * * *

Liability of Commonwealth authorities to pay duties of Customs

131B. (1) Subject to subsection (2), to the extent that, but for this section, an Act (whether enacted before, on or after 1 July 1987) would:

(a) exempt a particular Commonwealth authority from liability to pay duties of Customs; or

(b) exempt a person from liability to pay duties of Customs in relation to goods for use by a particular Commonwealth authority;

then, by force of this section, the exemption has no effect.

(2) Subsection (1) does not apply to an exemption if:

(a) the provision containing the exemption is enacted after 30 June 1987; and

(b) the exemption expressly refers to duties of Customs (however described).

Rate of import duty

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

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

(3) Subject to subsection 38 (5), for the purposes of this section, where an entry for home consumption in respect of goods is withdrawn under subsections 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 Comptroller 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 Comptroller 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 Comptroller shall, in a notice under subsection (1) declaring that a period is a declared period for the purposes of this section, specify in the notice another period being a period ending before the commencement of the declared period, as the base period in relation to the declared period.

(3) Where the Comptroller makes a declaration under subsection (1) specifying a declared period in respect of goods of any kind, he may, in respect of that kind of goods, or goods of a kind included in that kind of goods, make an order in writing (in this Act referred to as a **"quota order"**) applicable to a person specified in the order, being an order that states that the person's quota, for the declared period, in respect of goods of the kind to which the order relates is such quantity as is specified in the order or is nil, and, subject to subsection (4) of this section and subsection 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 Comptroller may, before authority to deal with the goods is given under section 39 and whether or not the declared period has expired, make, under subsection (3), a quota order that is applicable to that person for that declared period in respect of goods of that kind, and a quota order so made shall, subject to subsection 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 subsection (3), or revoking or varying a quota order under section 132C, with respect to a person, the Comptroller 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 Comptroller considers relevant, the person has entered for home consumption, and to such other matters as the Comptroller 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 subsection (6) or (7), security by way of cash deposit of an amount equal to the amount of duty payable on the goods, or on that part of the goods, at the rate in force at the time of entry of the goods.

(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 subsection 37 (1B) or (1C) or subsection 71B (2), deemed to have entered the goods for home consumption at that time.

Revocation and variation of quota orders

132C. (1) The Comptroller 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 Comptroller under this section, the revocation shall be deemed to have taken effect on the day on which the order came into force.

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

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

(5) Where:

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

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

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

Service of quota orders etc.

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

Export duties

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

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

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

Weights and measures

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

Proportion

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

Manner of fixing duty

136. Whenever goods (other than beer that is entered for home consumption after 31 January 1989) are sold or prepared for sale as or are reputed to be of a size or quantity greater than their actual size or quantity duties shall be charged according to such first-mentioned size or quantity.

Manner of determining volumes of, and fixing duty on, beer

137. (1) For the purposes of the Customs Acts in their application to beer that is entered for home consumption after 31 January 1989 in a bulk container, the container in which the beer is packaged shall be treated as containing:

(a) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered before 1 July 1991 and the actual volume of the contents of the container does not exceed 101.5% of the nominated volume—the nominated volume;

(b) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered before 1 July 1991 and the actual volume of the contents of the container exceeds 101.5% of the nominated volume—a volume equal to the sum of:

(i) the nominated volume; and

(ii) the volume by which the actual volume of the contents of the container exceeds 101.5% of the nominated volume;

(c) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered after 30 June 1991 and the actual volume of the contents of the container does not exceed 101% of the nominated volume—the nominated volume;

(d) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered after 30 June 1991 and the actual volume of the contents of the container exceeds 101% of the nominated volume—a volume equal to the sum of:

(i) the nominated volume; and

(ii) the volume by which the actual volume of the contents of the container exceeds 101% of the nominated volume; or

(e) if the volume of the contents of the container is not nominated for the purpose of the entry—the actual volume of the contents of the container;

and duty on beer so entered shall be fixed accordingly.

(2) For the purposes of the application of the Customs Acts in their application to beer that is entered for home consumption after 31 January 1989 in a container other than a bulk container, the container in which the beer is packaged shall be treated as containing:

(a) if the volume of the contents of the container is indicated on a label printed on, or attached to, the container and the actual volume of the contents of the container does not exceed 101.5% of the volume so indicated—the volume so indicated;

(b) if the volume of the contents of the container is indicated on a label printed on, or attached to, the container and the actual volume of the contents of the container exceeds 101.5% of the volume so indicated—a volume equal to the sum of:

(i) the volume so indicated; and

(ii) the volume by which the actual volume of the contents of the container exceeds 101.5% of the volume so indicated; or

(c) if the volume of the contents of the container is not indicated on a label printed on, or attached to, the container—the actual volume of the contents of the container;

and duty on beer so entered shall be fixed accordingly.

(3) In determining, for the purposes of this section, the volume of the contents of containers entered for home consumption, the Customs is not required to take a measurement of the contents of each container so entered but may employ such methods of sampling as are approved in writing by the Comptroller for the purpose.

(4) In this section:

"bulk container" , in relation to beer, means a container that has the capacity to have packaged in it more than 2 litres of beer;

"container" , in relation to beer, includes a bottle, can or any other article capable of holding liquids.

Measurement for duty

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

Value of goods sold

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

Strength of spirits

146. The strength of spirits may be ascertained for the purposes of duty by means of a hydrometer approved by the 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 subsection (1) of this section applies that have not been entered for home consumption shall be taken to have been entered for home consumption on the day on which the demand for duty on the goods is made.

Samples

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

When goods treated as the produce or manufacture of a country

151. (1) This section does not apply when ascertaining whether goods are the produce or manufacture of Australia for the purposes of this Act.

(2) Goods are not the produce or manufacture of a country for the purposes of this Act unless they are such produce or manufacture under this section.

(3) Notwithstanding subsections (5), (6) and (7), goods are not the produce or manufacture of New Zealand for the purposes of this Act unless:

- (a) they have been shipped to Australia from New Zealand; and
- (b) either:
  - (i) they have not been transhipped; or
  - (ii) the Collector is satisfied that, when they were shipped from New Zealand, their intended destination was Australia.

(4) Notwithstanding subsections (5), (6) and (12), goods are not the produce or manufacture of Canada for the purposes of this Act unless:

- (a) they have been shipped to Australia from Canada; and
- (b) either:
  - (i) they have not been transhipped; or
  - (ii) the Collector is satisfied that, when they were shipped from Canada, their intended destination was Australia.

(5) For the purposes of this Act, goods are the produce of a country if they are its unmanufactured raw products.

(6) For the purposes of this Act, goods are the manufacture of a country, being New Zealand, Papua New Guinea, Canada or a country that is not a Preference Country, if they were wholly manufactured in the country from one or more of:

(a) unmanufactured raw products;
(b) materials wholly manufactured in one or both of Australia and the country; and
(c) materials imported into the country that the Comptroller has determined, by notice in writing published in the *Gazette*, to be manufactured raw materials of the country.

(7) For the purposes of this Act, goods are the manufacture of New Zealand if:

(a) the last process in their manufacture was performed in New Zealand; and
(b) not less than 50%, or, where the goods are in a class in respect of which the Comptroller has determined, by notice in writing published in the *Gazette*, that another percentage is appropriate, that other percentage, of their factory or works cost is represented by the value of labour or materials, or of labour and materials, of New Zealand or of Australia and New Zealand.

(8) For the purposes of this Act, goods are the manufacture of a country, being Papua New Guinea or a Forum Island Country, if:

(a) the last process in their manufacture was performed in the country; and
(b) not less than 50%, or, where the goods are in a class in respect of which the Comptroller has determined, by notice in writing published in the *Gazette*, that a lesser percentage is appropriate, that lesser percentage, of their factory or works cost is represented by the value of labour or materials, or of labour and materials, of one or more of Australia, Papua New Guinea and Forum Island Countries.

(9) For the purposes of this Act, goods are the manufacture of a country, being Papua New Guinea or a Forum Island Country, if:

(a) the last process in their manufacture was performed in the country;
(b) they were partly manufactured from materials the produce or manufacture of New Zealand, being materials:
    (i) any quantity of which could lawfully be imported into Australia; and

(ii) that, if so imported, the duty of Customs in respect of which ascertained in accordance with sections 22, 24, 26 and 27 of the *Customs Tariff Act 1987* would be "Free" ;

(c) not less than 50%, or, where the goods are in a class in respect of which the Comptroller has determined, by notice in writing published in the *Gazette*, that a lesser percentage is appropriate, that lesser percentage, of their factory or works cost is represented by the value of labour or materials, or of labour and materials, of one or more of Australia, New Zealand, Papua New Guinea and Forum Island Countries; and

(d) not less than 25% of their factory or works cost is represented by the value of labour or materials, or of labour and materials, of one or more of Papua New Guinea and Forum Island Countries.

(10) For the purposes of this Act, goods are the manufacture of a country, being a Developing Country, if:

(a) the last process in their manufacture was performed in the country; and

(b) not less than 50% of their factory or works cost is represented by the value of labour or materials, or of labour and materials, of one or more of Australia, Papua New Guinea, Forum Island Countries and Developing Countries.

(11) For the purposes of this Act, goods are the manufacture of a Developing Country, but not of any particular Developing Country, if:

(a) the last process in their manufacture was performed in Papua New Guinea or a Forum Island Country;

(b) they are not the manufacture of Papua New Guinea or a Forum Island Country under subsection (8) or (9); and

(c) not less than 50% of their factory or works cost is represented by the value of labour or materials, or of labour and materials, of one or more of Australia, Papua New Guinea, Forum Island Countries and Developing Countries.

(12) Subject to subsection (12A), for the purposes of this Act, goods are the manufacture of a country, being Canada or a country that is not a Preference Country, if:

(a) the last process in their manufacture was performed in the country; and

(b) not less than 75%, or, where the goods are of a kind not commercially manufactured in Australia, 25%, of their factory or works cost is represented by the value of labour or materials, or of labour and materials, of the country or of Australia and the country.

(12A) In its application to Christmas Island, to Cocos (Keeling) Islands and to Norfolk Island, subsection (12) shall have effect as if the reference to 75% in paragraph (b) of that subsection were a reference to 50%.

(13) For the purposes of this Act, the Comptroller may, by notice in writing 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.

(14) For the purposes of subsection (12), the Comptroller may, by notice in writing published in the *Gazette*, determine that goods, or goods in a class, specified in the notice shall be deemed to be goods of a kind not commercially manufactured in Australia.

(14A) A determination under paragraph (7) (b) or subsection (13) may:

(a) make provision for the purposes of:

  (i) Part XVB only; or

  (ii) this Act (other than Part XVB); or

(b) make different provision for the purposes of Part XVB.

(14B) Subsection (14A) does not limit by implication the application of subsection 33 (3A) of the *Acts Interpretation Act 1901* in relation to this section.

(15) In this section, **"Forum Island Country"** , **"Developing Country"** and **"Preference Country"** have the same meanings as they have in the *Customs Tariff Act 1987* and, for the purposes of this section, a place that, for the purposes of that Act, is to be treated as a Developing Country shall be taken to be a country that is a Developing Country and a Preference Country.

Alterations to agreements where duty altered

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

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

(b) In the event of the alteration being the abolition or reduction of duty the purchaser may deduct the difference caused by the alteration from the agreed price.

(c) Any refund or payment of increased duty resulting from the alteration not being finally adopted shall be allowed between the parties as the case may require.

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

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

Recovery of duties

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

Division 2—Valuation of Imported Goods

Interpretation

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

"about the same time" has the meaning given by subsection (2);

"acquire" , in relation to goods, includes purchase, receive in exchange for other goods, take on lease, take on hire, take on hire-purchase and take under licence;

"Australian inland freight" , in relation to imported goods, means:

(a) if any amount (other than an amount of an Australian inland insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of:

(i) the transportation of the goods on or after their importation into Australia; or

(ii) the obtaining of any commercial or other documentation required in respect of the transportation referred to in subparagraph (i) or in respect of the importation of the goods;

and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount (other than an amount of Australian inland insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the provision of a service referred to in subparagraph (a) (i) or (ii) and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount (other than an amount of Australian inland insurance) was paid or is payable by a trader in respect of the provision of a service referred to in subparagraph (a) (i) or (ii) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary costs payable in respect of the provision of the same service to a trader in respect of the same class of goods as the imported goods, under the same conditions, by a person who is not related to a trader of goods of that class, on or after their importation into Australia;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"Australian inland insurance", in relation to imported goods, means:

(a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods on or after importation into Australia and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a) and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount was paid or is payable by a trader in respect of insurance of a kind referred to in paragraph (a) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of the same kind of insurance to a trader in respect of the same class of goods as the imported goods, under the same conditions, where the insurer is not related to a trader of goods of that class;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"buying commission" has the meaning given by section 155;

"comparable goods" , in relation to imported goods, means:

(a) the imported goods;

(b) identical goods; or

(c) similar goods;

"computed value" , in relation to imported goods, has the meaning given by section 161F;

"computed valued goods" means exporter's goods:

(a) whose owner has, before the payment of duty in respect of the goods (whether before or after any determination of a value of the goods) requested a Collector to take their customs value to be their computed value in preference to their deductive value; and

(b) whose computed value can be determined by the Collector;

"customs value" , in relation to imported goods, has the meaning given by section 159;

"deductible administrative costs" , in relation to goods in a sale, means any costs that are payable on or after the importation of the goods into Australia in relation to the activities of, or services performed by, any local, State or Commonwealth public authorities or officers, any licensed Customs agent, or any other person in Australia, in connection with the importation and subsequent delivery of the goods;

"deductible financing costs" , in relation to goods in a sale, means any interest payable under a written contract, agreement or arrangement under which the purchaser is permitted to delay the payment of the price in return for the payment of that interest (whether or not also in return for an increase in the price or for the payment of an additional amount), being a contract, agreement or arrangement entered into between the purchaser and the vendor or another person in relation to the purchase of the goods, where:

(a) the interest is distinguished to the satisfaction of a Collector from the price actually paid or payable for the goods;

(b) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that identical or similar goods are actually sold at the last-mentioned price—the purchaser so demonstrates; and

(c) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that the rate of the interest does not exceed the rate of interest in similar contracts, agreements or arrangements entered into in the country where, and at the time when, finance under the first-mentioned contract, agreement or arrangement was provided—the purchaser so demonstrates;

"deductive (contemporary sales) value" , in relation to imported goods, has the meaning given by section 161C;

"deductive (derived goods sales) value" , in relation to imported goods, has the meaning given by section 161E;

"deductive (later sales) value" , in relation to imported goods, has the meaning given by section 161D;

"deductive value" , in relation to imported goods, means their:

(a) deductive (contemporary sales) value;

(b) deductive (later sales) value; or

(c) deductive (derived goods sales) value;

"exempted container" means a container that:

(a) is not a pallet; and

(b) is or has been permitted to be temporarily imported into Australia free of Customs duty under section 162A;

"exempted pallet" means a pallet that is or has been permitted to be temporarily imported into Australia free of Customs duty under either section 162A or 162B;

"exporter's goods" means imported goods exported to Australia by their producer;

"fall-back value" , in relation to imported goods, has the meaning given by section 161G;

"foreign inland freight" , in relation to imported goods, means:

(a) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of:

(i) the transportation of the goods within a foreign country before they left their place of export; or

(ii) the obtaining of any commercial or other documentation (other than documentation required in respect of overseas freight or overseas insurance) required in respect of the transportation referred to in subparagraph (i) or in respect of the transportation of the goods from the foreign country concerned;

and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the provision of service referred to in subparagraph (a) (i) or (ii) and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader in respect of the provision of a service referred to in subparagraph (a) (i) or (ii) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary costs payable in respect of the provision of the same service to a trader, in respect of the same class of goods as the imported goods, under the same conditions, by a person who is not related to a trader of goods of that class, before leaving the same place of export;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"foreign inland insurance" , in relation to imported goods, means:

(a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods within a foreign country before they left their place of export and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a) and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount was paid or is payable by a trader in respect of insurance of a kind referred to in paragraph (a) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of the same kind of insurance to a trader in respect of the same class of goods as the imported goods, under the same conditions, where the insurer is not related to a trader of goods of that class;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"identical goods" , in relation to imported goods, has the meaning given by section 156;

"identical goods value" , in relation to imported goods, has the meaning given by section 161A;

"import sales transaction" , in relation to imported goods, means:

(a) where there was one, and only one, contract of sale for the importation of the goods into Australia entered into before they became subject to Customs control and it was also a contract for their exportation from a foreign country—that contract;

(b) where there was one, and only one, contract of sale for the importation of the goods into Australia entered into before they became subject to Customs control and it was not also a contract for their exportation from a foreign country—that contract; or

(c) where there were 2 or more contracts of sale for the importation of the goods into Australia entered into before they became subject to Customs control—whichever of the contracts was made last;

and includes:

(d) any contract, agreement or arrangement, whether formal or informal, to which the vendor, the purchaser or an agent of, or a person related to, the vendor or purchaser is a party that provides for an increase in the value of the goods the subject of the contract of sale referred to in paragraph (a), (b) or (c) prior to their importation; and

(e) any other contract, agreement or arrangement relating to the contract of sale referred to in paragraph (a), (b) or (c) that a Collector determines is so closely connected with that contract and to the goods the subject of that contract that together they form a single transaction;

"overseas freight" , in relation to imported goods, means:

(a) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of the transportation of the goods from their place of export to Australia, the goods are not self transported goods and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the transportation referred to in paragraph (a), the goods concerned are not self transported goods and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader in respect of the transportation referred to in paragraph (a) but the goods concerned are self transported goods or a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount, as a Collector determines, having regard to the ordinary costs of the transportation of goods of the same class as the imported goods:

(i) if the imported goods are self transported goods—under the most commercially viable conditions; or

(ii) if the imported goods are not self transported goods—under the same conditions as the imported goods;

by a person who is not related to a trader of goods of that class, between the same foreign country and Australia;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"overseas insurance" , in relation to imported goods, means:

(a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods from their place of export to Australia, the goods are not self transported goods and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a), the goods concerned are not self transported goods, and a Collector:

  (i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

  (ii) is satisfied of the correctness of that amount;

that amount; or

(c) if any amount was paid or is payable in respect of insurance of a kind referred to in paragraph (a) but the goods concerned are self transported goods or a Collector is not satisfied as required by paragraph (a) or (b) whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of insurance in relation to the transportation of goods of the same class as the imported goods:

  (i) if the imported goods are self transported goods—under the most commercially viable conditions; or

  (ii) if the imported goods are not self transported goods—under the same conditions as the imported goods;

where the insurer is not related to a trader of the transported goods;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs;

"place of export" , in relation to imported goods, means:

(a) where, while in the country from which they were exported the goods were posted to Australia—the place where they were so posted;

(b) where, while in the country from which they were exported, the goods, not being goods referred to in paragraph (a), were packed in a container—the place where they were so packed;

(c) where the goods, being self transported goods, were exported from a country by sea or air—the place, or last place, in that country from which the goods departed for Australia;

(d) where the goods, not being goods referred to in paragraph (a), (b) or (c), were exported from a country by sea or air—the place, or first place, in that country where the goods were placed on board a ship or aircraft for export from that country;

(e) where the goods, not being goods referred to in paragraph (a), (b), (c) or (d), were exported from a country by land, or by river, canal or other inland waterway—the place at which the goods finally crossed the border from that country into another country in the course of their transportation to Australia; or

(f) in any other case—a place determined by a Collector;

"price" , in relation to goods the subject of a contract of sale, means an amount determined by a Collector, after disregarding value unrelated matters in relation to those goods, to be the sum of:

(a) all payments that have been made, or are to be made, directly or indirectly, in relation to such goods, by or on behalf of the purchaser:

(i) to the vendor;

(ii) to any person related to the vendor unless a Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or

(iii) to any other person for the direct or indirect benefit of the vendor;

in accordance with the contract of sale; and

(b) all payments that have been made, or are to be made, directly or indirectly, in relation to such goods, by or on behalf of the purchaser:

(i) to the vendor;

(ii) to any person related to the vendor unless a Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or

(iii) to any other person for the direct or indirect benefit of the vendor;

under any other contract, agreement or arrangement, whether formal or informal, being a contract, agreement or arrangement for the doing of anything to increase the value of the goods or that a Collector is satisfied is so closely connected with the contract of sale referred to in paragraph (a) and to the goods the subject of that contract that together they form a single transaction;

whether the payment is made in money or by letter of credit, negotiable instrument or otherwise, and includes:

(c) the value, as determined by a Collector, of any goods or services supplied, or to be supplied, by, or on behalf of, the purchaser as part of the consideration passing from the purchaser under the contract of sale referred to in paragraph (a); and

(d) the value, as determined by a Collector, of any goods or services supplied, or to be supplied, directly or indirectly, by, or on behalf of, the purchaser:

(i) to the vendor;

(ii) to any person related to the vendor unless the Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or

(iii) to any other person for the direct or indirect benefit of the vendor;

under a contract, agreement or arrangement of the kind referred to in paragraph (b);

but does not include the amount of any duty of Customs (including any dumping or countervailing duty imposed under the *Customs Tariff (Anti-Dumping) Act 1975*), any sales tax, or any other duty or tax, that is payable by law because of the importation into, or subsequent use, sale or disposition in, Australia of the goods;

"price related costs", in relation to imported goods, means:

(a) production assist costs in respect of the goods;

(b) packing costs for materials and labour paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods (including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the goods for their exportation from a foreign country or otherwise placing them in the condition in which they are imported into Australia, but not including the cost of any exempted pallet or exempted container concerned in their exportation);

(c) foreign inland freight and foreign inland insurance in relation to the goods paid or payable, directly or indirectly, by or on behalf of the purchaser;

(d) commission, other than a buying commission, or brokerage, paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods; or

(e) all royalties or licence fees paid or payable, directly or indirectly, by or on behalf of the purchaser to the vendor or to another person under the import sales transaction, not being royalties or licence fees:

(i) that do not relate to the imported goods in the condition, or substantially in the condition, in which they are imported into Australia;

(ii) whose only relationship to the imported goods in the condition in which they are imported into Australia is insubstantial or incidental;

(iii) that are merely for the right to reproduce the imported goods within Australia; or

(iv) that are payable for the assembly, erection, construction or maintenance of imported goods after their importation into Australia or for any technical assistance in respect of the goods after their importation; and

(f) the whole or any part of the proceeds of any subsequent use, resale or disposal of the goods, by or on behalf of the purchaser, that have accrued, or will accrue, to the vendor;

"produce" includes grow, manufacture, mine, process and treat;

"production assist costs" , in relation to imported goods (including imported goods that are comparable goods or derived goods in relation to other imported goods), means the sum of:

(a) the purchaser's material costs;

(b) the purchaser's tooling costs;

(c) the purchaser's work costs; and

(d) the purchaser's subsidiary costs;

in relation to those first-mentioned imported goods;

"production materials" , in relation to the imported goods, means:

(a) materials, components or other goods that form part of the imported goods; and

(b) materials consumed in the production of the imported goods;

"production tooling" , in relation to imported goods, means tools, dies, moulds or other machinery or equipment used in the production of the imported goods;

"production work" means art work, design work, development work and engineering work and includes models, plans and sketches;

"purchaser" , in relation to imported goods, means the purchaser under the import sales transaction for the goods;

"purchaser's material costs" , in relation to imported goods, means the sum of the following amounts relating to production materials supplied, directly or indirectly, by the purchaser free of charge or at a reduced cost:

(a) an amount equal to:

(i) where the materials were acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition;

(ii) where the materials were acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the materials—the cost of acquisition of the materials by the person; or

(iii) where the materials were produced by the purchaser or by a person who was related to the purchaser at the time of production of the goods—the cost of production;

(b) the cost of transporting the materials after their acquisition or production by the purchaser to the place of production of the imported goods;

(c) the cost of repairs and modifications of the materials after their acquisition or production by the purchaser;

"purchaser's subsidiary costs" , in relation to imported goods, means such part of the sum of the following amounts relating to subsidiary goods, or subsidiary services, supplied, directly or indirectly, by the purchaser free of charge or at a reduced price as a Collector considers should be apportioned to the production of the imported goods:

(a) an amount equal to:

(i) where the subsidiary goods relate to work goods and were available generally to the public in Australia or elsewhere at the time of acquisition by the purchaser (in this definition called **"available goods"**)—the cost to the public of acquiring the available goods;

(ii) where the subsidiary goods (other than available goods) were acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition;

(iii) where the subsidiary goods (other than available goods) were acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the goods—the cost of acquisition by the person; or

(iv) where the subsidiary goods (other than available goods) were produced by the purchaser or by a person who was related to the purchaser at the time of the production of the goods—the cost of that production;

(b) the cost of transporting the subsidiary goods (other than goods that relate to work goods) after their acquisition or production by the purchaser to the place of production of the production materials or production tooling, as the case requires;

(c) the cost of repairs and modifications of subsidiary goods, (other than goods that relate to work goods), after their acquisition or production by the purchaser;

(d) the cost of repairs and modifications outside Australia of subsidiary goods that relate to work goods after the acquisition or production of the subsidiary goods by the purchaser;

(e) an amount equal to:

(i) where the subsidiary services were supplied by a person who was not related to the purchaser at the time of the supply—the cost of that supply; or

(ii) in any other case—such amount as the Collector determines to be the value of the subsidiary services;

(f) the cost of the supply of any further services in relation to the subsidiary services (other than services that relate to work services);

(g) the cost of the supply outside Australia of any further services in relation to the subsidiary services that relate to work services;

"purchaser's tooling costs" , in relation to imported goods, means such part of the sum of the following amounts relating to production tooling supplied, directly or indirectly, by the purchaser free of charge or at a reduced price as a Collector considers should be apportioned to the production of the imported goods:

(a) an amount equal to:

(i) where the tooling was acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition;

(ii) where the tooling was acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the tooling—the cost of acquisition of the tooling by the person; or

(iii) where the tooling was produced by the purchaser or by a person who was related to the purchaser at the time of production of the tools—the cost of production;

(b) the cost of transporting the tooling after its acquisition or production by the purchaser to the place of production of the imported goods;

(c) the cost of repairs and modifications of the tooling after its acquisition or production by the purchaser;

"purchaser's work costs" , in relation to imported goods, means such part of the sum of the following amounts relating to work goods, or work services, supplied, directly or indirectly, by the purchaser free of charge or at a reduced price, as a Collector considers should be apportioned to the production of the imported goods:

(a) an amount equal to:

(i) where the work goods were available generally to the public in Australia or elsewhere at the time of acquisition by the purchaser (in this definition called **"available goods"**)—the cost to the public of acquiring the goods;

(ii) where the work goods (other than available goods) were acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the cost of acquisition;

(iii) where the work goods (other than available goods) were acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the work goods—the cost of acquisition by the person; or

(iv) where the work goods (other than available goods) were produced by the purchaser or by a person who was related to the purchaser at the time of the production of the work goods—the cost of that production;

(b) the cost of transporting the work goods, after their acquisition or production by the purchaser to the place of production of the imported goods;

(c) the cost of repairs and modifications outside Australia of the work goods after their acquisition by the purchaser;

(d) an amount equal to:

(i) where the work services were supplied by a person who was not related to the purchaser at the time of the supply—the cost of that supply; or

(ii) in any other case—such amount as the Collector determines to be the value of the work services;

(e) the cost of the supply outside Australia of any further services in relation to the work services;

"related" , in relation to persons, has the meaning given by subsection (3);

"request goods" means goods whose owner has requested a Collector to determine their deductive (derived goods sales) value;

"royalty" , in relation to imported goods, means royalty within the meaning given by section 157;

"self transported goods" means:

(a) a ship imported otherwise than in another ship or an aircraft; or

(b) an aircraft imported otherwise than in a ship or another aircraft;

"similar goods" , in relation to imported goods, has the meaning given by section 156;

"similar goods value" , in relation to imported goods, has the meaning given by section 161B;

"subsidiary goods" , in relation to imported goods, means goods supplied, directly or indirectly, by the purchaser in relation to the production of production materials, production tooling, work goods, or work services, supplied, directly or indirectly by the purchaser (whether or not free of charge or at a reduced cost) in relation to the production of the imported goods;

"subsidiary services" , in relation to imported goods, means services supplied, directly or indirectly, by the purchaser in relation to the production of production materials, production tooling, work goods, or work services, supplied, directly or indirectly by the purchaser (whether or not free of charge or at a reduced cost) in relation to the production of the imported goods;

"trade mark" means a mark of a kind capable of registration under the *Trade Marks Act 1955*, whether or not it is registered under that Act or any other law, but does not include a mark that relates to a service;

"trader" , in relation to goods, means a vendor, exporter, purchaser or importer of the goods;

"transaction value" , in relation to imported goods, has the meaning given by section 161;

"transportation" includes transportation by post and storage or handling incidental to transportation;

"value unrelated amount" , in relation to goods in a sale, means:

(a) where the sale is on commission—the amount of commission usually earned in connection with the sale of other goods of the same class and in the same quantity as the goods in the sale, being a sale of other goods in Australia at the same trade level as the first-mentioned goods;

(b) where the sale is not on commission—the amount usually added for profit and general expenses (including all costs, direct or indirect, of marketing), taken as a whole, in connection with the sale of other goods of the same class or kind and in the same quantity as the goods in the sale, being a sale of other goods in Australia at the same trade level as the first-mentioned goods;

(c) Australian inland freight and Australian inland insurance in respect of the goods in the sale or of the goods from which the goods in the sale were derived;

(d) the amount of any duties of Customs and other taxes payable because of the importation into, or the sale in, Australia of the goods in the sale or of goods from which the goods in the sale were derived; and

(e) overseas freight and overseas insurance in relation to the goods in the sale or of the goods from which the goods in the sale were derived;

"value unrelated matter" , in relation to goods the subject of a contract for sale, means:

(a) any rebate of, or other decrease in, the price other than such a rebate or decrease the benefit of which has been received when the price is being determined; or

(b) any costs, charges or expenses in relation to activities undertaken by the purchaser on the purchaser's own account in relation to the goods (including any activities of the purchaser relating to advertising or promoting the sale of, or to warranties or guarantees in relation to, the goods);

"vendor" , in relation to imported goods, means the vendor under the import sales transaction for the goods;

"work goods" , in relation to imported goods, means goods relating to production work that was:

(a) required for the production of the imported goods; and

(b) undertaken outside Australia.

"work services" , in relation to imported goods, means services relating to production work that was:

(a) required for the production of the imported goods; and

(b) undertaken outside Australia.

(2) For the purposes of this Division, an event occurs about the same time as another event if the first event occurs:

(a) on the same day as the other event; or

(b) within the 45 days immediately before, or the 45 days immediately after, the day on which the other event occurs.

(3) For the purposes of this Division, 2 persons shall be deemed to be related to each other if, and only if:

(a) both being natural persons:

(i) they are connected by a blood relationship or by marriage or by adoption; or

(ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;

(b) both being bodies corporate:

(i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate);

(ii) both of them together control, directly or indirectly, a third body corporate;

(iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them;

(c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate);

(d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or

(e) they are members of the same partnership.

(4) A person, whether or not a body corporate, shall be taken to control another body corporate for the purposes of subsection (3) if that person has the capacity to impose any restraint or restrictions upon, or to exercise any direction over, that other body corporate.

(5) Without, by implication, affecting the meaning of any reference to an owner of goods in any other provision of this Act, a reference in this Division to the owner of goods, being a ship or aircraft, shall not be taken to include a person acting as agent for the owner or receiving freight or other charges payable in respect of the ship or aircraft.

Interpretation—Buying commission

155. (1) Subject to subsection (2), a reference in this Division to a buying commission in relation to imported goods is a reference to an amount paid or payable by or on behalf of the purchaser of the goods directly or indirectly to a person who, as an agent of the purchaser, represented the purchaser in the purchase of the goods in the import sales transaction.

(2) An amount paid by a purchaser of imported goods to another person in the circumstances referred to in subsection (1) shall be taken not to be a buying commission unless a Collector is satisfied that that other person did not and does not:

(a) produce, in whole or in part, or control the production, in whole or in part of:

  (i) the imported goods, or any other goods whose value would be taken into account in determining, or attempting to determine, the transaction value of the imported goods; or

  (ii) any other goods of the same class as goods referred to in subparagraph (i);

(b) supply, or control the supply of, any services:

  (i) whose value would be taken into account in determining, or attempting to determine, the price of the imported goods; or

  (ii) any other services of the same class as the services referred to in subparagraph (i);

(c) transport the imported goods, or any other goods referred to in subparagraph (a) (i), within any foreign country, between a foreign country and Australia, or within Australia, for any purpose associated with the manufacture or importation of those imported goods;

(d) purchase, exchange, sell, or otherwise trade any of the goods referred to in subparagraph (a) (i) or supply any of the services referred to in subparagraph (b) (i) other than in the capacity of an agent of the purchaser;

(e) in relation to any of the goods referred to in subparagraph (a) (i) or any of the services referred to in subparagraph (b) (i):

  (i) act as an agent for, or in any other way represent, the producer, supplier, or vendor of the goods or services; or

  (ii) otherwise be associated with any such person except as the agent of the purchaser; or

(f) claim or receive, directly or indirectly, the benefit of any commission, fee or other payment, in the form of money, letter of credit, negotiable instruments, or any goods or services, from any person as a consequence of the import sales transaction, other than commission received from the purchaser for the services rendered by that person in that transaction.

Interpretation—Identical goods and similar goods

156. (1) Subject to subsection (2), a reference in this Division to identical goods, in relation to imported goods is a reference to goods that a Collector is prepared, or is required by their owner, to treat as identical goods in relation to the imported goods, being goods that the Collector is satisfied:

(a) are the same in all material respects, including physical characteristics, quality and reputation, as the imported goods;

(b) were produced in the same country as the imported goods; and

(c) were produced by or on behalf of the producer of the imported goods;

but not being goods in relation to which:

(d) art work, design work, development work, engineering work undertaken, or substantially undertaken, in Australia; or

(e) models, plans or sketches prepared, or substantially prepared, in Australia;

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

(2) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under subsection (1) as identical goods in relation to the goods to be valued, the Collector shall disregard the requirement in paragraph (1) (c) for the purpose of treating goods as identical goods in relation to the imported goods.

(3) Subject to subsection (4), a reference in this Division to similar goods, in relation to imported goods, is a reference to goods that a Collector is prepared, or is required by their owner, to treat as similar goods in relation to the imported goods, being goods that the Collector is satisfied:

(a) closely resemble the imported goods in respect of component materials and parts and in respect of physical characteristics;

(b) are functionally and commercially interchangeable with the imported goods having regard to the quality and reputation (including any relevant trade marks) of each lot of goods;

(c) were produced in the same country as the imported goods; and

(d) were produced by or on behalf of the producer of the imported goods;

but not being goods in relation to which:

(e) art work, design work, development work or engineering work undertaken, or substantially undertaken, in Australia; or

(f) models, plans or sketches prepared, or substantially prepared, in Australia;

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

(4) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under subsection (3) as similar goods in relation to the goods to be valued, the Collector shall disregard the requirement in paragraph (3) (d) for the purpose of treating goods as similar goods in relation to the imported goods.

Interpretation—Royalties

157. (1) A reference in this Division to a royalty includes a reference to an amount paid or credited (however described or computed and whether the payment or credit is periodical or not) to the extent to which the amount is paid or credited as consideration for:

(a) the making, use, exercise or vending of an invention or the right to make, use, exercise or vend an invention;

(b) the use of, or the right to use:

   (i) a design or trade mark;

   (ii) confidential information; or

   (iii) machinery, implements, apparatus or other equipment;

(c) the supply of scientific, technical, industrial, commercial or other knowledge or information;

(d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any matter falling within any of the foregoing paragraphs; or

(e) a total or partial forbearance in respect of any matter falling within any of the foregoing paragraphs (including paragraph (d)).

(2) Where:

(a) a person pays an amount of royalty in respect of goods at a time when the goods are not imported goods;

(b) the goods are imported goods before or after the payment; and

(c) the payment is made in connection with a scheme entered into or carried out for the purpose of the payment not being royalty for the purposes of this Division;

the payment shall be deemed, for the purposes of this Division, to have been made at a time when the goods were imported goods.

(3) In this section:

"design" means a design of a kind capable of being registered under the *Designs Act 1906*, whether or not it is registered under that Act or any other law;

"payment" , in relation to an amount, includes the incurring of a liability to pay, and the crediting of, the amount;

"scheme" means:

(a) an agreement, arrangement, understanding, promise or undertaking, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

(b) a plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;

"use" , includes hire-out, lease-out, rent-out, sell, market, distribute or otherwise trade in or dispose of.

(4) For the purposes of this section, a scheme shall be taken to be entered into or carried out for a particular purpose if the person who has, or one or more of the persons who have, entered into or carried out the scheme or a part of the scheme did so for that purpose or for purposes including that purpose.

Interpretation—Transportation costs

158. Where the purchaser of imported goods:

(a) has supplied any production material, production tooling or work goods in relation to those imported goods to a person in a foreign country for the purposes related to the production of those imported goods; or

(b) has supplied any subsidiary goods to a person in a foreign country for purposes related to the production of production materials, production tooling, work goods or work services in relation to those imported goods;

references in this Division to the cost of transporting that production material or production tooling or those work goods or subsidiary goods, after its or their acquisition or production by the purchaser, to the place of production in that foreign country shall be taken to include:

(c) the packing costs for materials and labour paid or payable by or on behalf of the purchaser in relation to that production material, or production tooling or those work goods or subsidiary goods including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the material tooling or goods for transportation to the place of production of the imported goods;

(d) any amount paid or payable by or on behalf of the purchaser in relation to that production material or production tooling or those work goods or subsidiary goods that would:

(i) if that foreign country were Australia;

(ii) if any other country from which that material or tooling or those goods were exported were a foreign country; and

(iii) if that material or tooling or those goods were imported goods;

be an amount of foreign inland freight or foreign inland insurance, overseas freight or overseas insurance, or Australian inland freight or Australian inland insurance; and

(e) all duties of Customs, sales tax, or other duties or taxes paid or payable in consequence of the importation of that production tooling or those work goods or subsidiary goods or in consequence of any other use, sale or disposition in that foreign country.

Value of imported goods

159. **(1)** Unless the contrary intention appears in this Act or in another Act, the value of imported goods for the purposes of an Act imposing duty is their customs value and the Collector shall determine that customs value in accordance with this section.

(2) Where a Collector can determine the transaction value of imported goods, their customs value is their transaction value.

(3) Where a Collector cannot determine the transaction value of imported goods but can determine their identical goods value, their customs value is their identical goods value.

(4) Where a Collector:

(a) cannot determine the transaction value of imported goods; and

(b) cannot determine their identical goods value;

but can determine their similar goods value, their customs value is their similar goods value.

(5) Where a Collector:

(a) cannot determine the transaction value of imported goods, not being computed valued goods;

(b) cannot determine their identical goods value; and

(c) cannot determine their similar goods value;

but can determine their deductive (contemporary sales) value, their customs value is their deductive (contemporary sales) value.

(6) Where a Collector:

(a) cannot determine the transaction value of imported goods, not being computed valued goods;
(b) cannot determine their identical goods value;
(c) cannot determine their similar goods value; and
(d) cannot determine their deductive (contemporary sales) value;

but can determine their deductive (later sales) value, their customs value is their deductive (later sales) value.

(7) Where a Collector:

(a) cannot determine the transaction value of imported goods, not being computed valued goods but being request goods;
(b) cannot determine their identical goods value;
(c) cannot determine their similar goods value;
(d) cannot determine their deductive (contemporary sales) value; and
(e) cannot determine their deductive (later sales) value;

but can determine their deductive (derived goods sales) value, their customs value is their deductive (derived goods sales) value.

(8) Where a Collector:

(a) cannot determine the transaction value of exporter's goods, not being computed valued goods;
(b) cannot determine their identical goods value;
(c) cannot determine their similar goods value;
(d) where they are request goods, cannot determine any of their deductive values; and
(e) where they are not request goods:
 (i) cannot determine their deductive (contemporary sales) value; and
 (ii) cannot determine their deductive (later sales) value;

but can determine their computed value, their customs value is their computed value.

(9) Where a Collector:

(a) cannot determine the transaction value of imported goods, being computed valued goods;
(b) cannot determine their identical goods value; and
(c) cannot determine their similar goods value;

their customs value is their computed value.

(10) Where a Collector:

(a) cannot determine the transaction value of imported goods;

(b) cannot determine their identical goods value;

(c) cannot determine their similar goods value;

(d) where they are request goods, cannot determine any of their deductive values;

(e) where they are not request goods:

(i) cannot determine their deductive (contemporary sales) value; and

(ii) cannot determine their deductive (later sales) value; and

(f) where they are exporter's goods, cannot determine their computed value;

their customs value is their fall-back value.

Inability to determine a value of imported goods by reason of insufficient or unreliable information

160. **(1)** Where a Collector is not satisfied that there is sufficient reliable information available to the Collector, being information of a kind referred to in subsection (2), to enable him or her to determine a value of imported goods in accordance with a provision of this Division for determining their customs value, the Collector may determine, in writing, that he or she is not so satisfied and the Collector shall thereupon be taken to be unable to determine that first-mentioned value.

(2) Where a Collector is not satisfied that there is sufficient reliable information available to the Collector to enable him or her to determine the quantity and correctness of any amount that is required to be taken into account in determining a value of those goods in accordance with a provision of this Division for determining the customs value of imported goods, then:

(a) where that amount would ordinarily form part of their customs value under the particular valuation method set out in that provision—the Collector shall determine, in writing, that he or she is not so satisfied and the Collector shall thereupon be taken to be unable to use that method;

(b) where that amount would ordinarily be deducted from the amount that would otherwise be their customs value under the particular valuation method set out in that provision:

(i) if the Collector determines, in writing, that he or she is not so satisfied and that he or she does not desire to use the method—the Collector shall thereupon be taken to be unable to use that method; and

(ii) if the Collector determines, in writing, that he or she is not so satisfied but that he or she desires to use the method—the Collector may use the method but no deduction shall be allowed on account of that amount.

Transaction value

161. (1) The transaction value of imported goods is an amount equal to the sum of their adjusted price in their import sales transaction and of their price related costs to the extent that those costs have not been taken into account in determining the price of the goods.

(2) In this section:

"adjusted price" , in relation to imported goods, means the price of the goods determined by a Collector who deducts from the amount that, but for this subsection, would be the amount of that price, such amounts as the Collector considers necessary to take account of the following matters:

(a) deductible financing costs in relation to the goods;

(b) any costs that the Collector is satisfied:

(i) are payable for the assembly, erection, construction or maintenance of, or any technical assistance in respect of, the goods;

(ii) are incurred after importation of the goods into Australia; and

(iii) are capable of being accurately quantified by reference to the import sales transaction relating to the goods;

(c) Australian inland freight and Australian inland insurance in relation to the goods;

(d) deductible administrative costs in relation to the goods;

(e) overseas freight and overseas insurance in relation to the goods.

Identical goods value

161A. (1) The identical goods value of imported goods is their value calculated as if the value of each of their units were:

(a) the unit price of comparable identical goods; or

(b) if, because 2 or more lots of goods are treated as comparable identical goods, there are 2 or more such unit prices—the lower or lowest of those unit prices.

(2) In this section:

"comparable identical goods" , in relation to imported goods, means identical goods that a Collector is satisfied:

(a) were exported to Australia about the same time as the imported goods; and

(b) either:

(i) were sold in the same, or substantially the same, quantities, as the imported goods in an import sales transaction at the same trade level as the import sales transaction of the imported goods; or

(ii) are of a kind that reasonable inquiry by the Collector has not shown to be so sold;

"unit price" , in relation to comparable identical goods, means their transaction value:

(a) adjusted to such extent as a Collector considers necessary so that that value is what it would have been if:

(i) their foreign inland freight and foreign inland insurance had been what that freight and insurance would have been if the goods had been transported, and only transported, over the distances over which, and in the modes in which, the imported goods with which they are comparable identical goods were transported;

(ii) the trade levels of the import sales transactions of the comparable identical goods had been those of the import sales transaction of the imported goods; and

(iii) the comparable identical goods had been sold in their import sales transactions in the quantity in which the imported goods were sold in their import sales transaction; and

(b) divided by the number of units of the comparable identical goods.

Similar goods value

161B. **(1)** The similar goods value of imported goods is their value calculated as if the value of each of their units were:

(a) the unit price of comparable similar goods; or

(b) if, because 2 or more lots of goods are treated as comparable similar goods, there are 2 or more such unit prices—the lower or lowest of those unit prices.

(2) In this section:

"comparable similar goods" , in relation to imported goods, means similar goods that a Collector is satisfied:

(a) were exported to Australia about the same time as the imported goods; and

(b) either:

(i) were sold in the same, or substantially the same, quantities, as the imported goods in an import sales transaction at the same trade level as the import sales transaction of the imported goods; or

(ii) are of a kind that reasonable inquiry by the Collector has not shown to be so sold;

"unit price" , in relation to comparable similar goods, means their transaction value:

(a) adjusted to such extent as a Collector considers necessary so that that value is what it would have been if:

(i) their foreign inland freight and foreign inland insurance had been what that freight and insurance would have been if the goods had been transported, and only transported, over the distances over which, and in the modes in which, the imported goods with which they are comparable similar goods were transported;

(ii) the trade levels of the import sales transactions of the comparable similar goods had been those of the import sales transaction of the imported goods; and

(iii) the comparable similar goods had been sold in their import sales transactions in the quantity in which the imported goods were sold in their import sales transaction; and

(b) divided by the number of units of the comparable similar goods.

Deductive (contemporary sales) value

161C. (1) The deductive (contemporary sales) value of imported goods is their value calculated as if the value of each of their units were the unit price of comparable goods sold in the reference sale or sales.

(2) In this section:

"contemporary sale" , in relation to comparable goods comparable with imported goods, means a sale known to a Collector of the comparable goods in Australia in the condition in which they were imported, being a sale:

(a) at about the same time as the time of importation of the imported goods;

(b) at the first trade level at which the comparable goods were sold after their importation;

(c) in circumstances where, in the opinion of the Collector, the purchaser of the comparable goods:

(i) was not, at the time of the sale, related to the vendor of the comparable goods; and

(ii) did not incur any production assist costs in relation to the comparable goods; and

(d) that was, in the opinion of the Collector, a sale of a sufficient number of units of comparable goods as to permit an appropriate determination of their price per unit;

"reference sale" , in relation to comparable goods, means:

(a) where there was only one contemporary sale of the goods—that sale;

(b) where:

(i) there were 2 or more such sales; and

(ii) the comparable goods were sold in those sales at the one unit price;

each of those sales;

(c) where:

(i) there were 2 or more such sales;

(ii) the comparable goods were sold in those sales at 2 or more unit prices; and

(iii) a higher number of units of comparable goods were sold in those sales at one of those unit price than were sold in those sales at any other single particular unit price;

the sale, or each of the sales, in which comparable goods were sold at the particular unit price first-mentioned in subparagraph (iii);

(d) where:

(i) there were 2 or more such sales;

(ii) the comparable goods were sold in those sales at 2 or more unit prices; and

(iii) an equal number of units of comparable goods were sold in those sales at each of those unit prices;

the sale or sales in which the comparable goods were sold at the lower or lowest of the unit prices; and

(e) where:

(i) there were 2 or more such sales;

(ii) the comparable goods were sold in those sales at 2 or more unit prices; and

(iii) an equal number of units of comparable goods were sold in those sales at 2 or more of those unit prices and that number was not exceeded by the number of units of comparable goods sold in those sales at any other single particular unit price;

the sale, or sales, at which comparable goods were sold at the lower or lowest of the unit prices first-mentioned in subparagraph (iii);

"unit price" , in relation to comparable goods sold in a contemporary sale, means the price of the goods in that sale:

(a) reduced by the sum of value unrelated amounts, deductible administrative costs, and deductible financing costs, in relation to the comparable goods; and

(b) divided by the number of units of the comparable goods.

(3) The following example illustrates the operation of paragraph (c) of the definition of **"reference sale"** in subsection (2):

Facts:

There were 2 contemporary sales of 5 units of comparable goods at a unit price of $100.

There were 6 contemporary sales of 3 units of comparable goods at a unit price of $40.

There was one contemporary sale of 4 units of comparable goods at a unit price of $40.

There was one contemporary sale of 7 units of comparable goods at a unit price of $60.

There were 3 contemporary sales of 2 units of comparable goods at a unit price of $60.

This means that:

10 units of comparable goods were sold in contemporary sales at $100.

22 units of comparable goods were sold in contemporary sales at $40.

13 units of comparable goods were sold in contemporary sales at $60.

Result:

More units of comparable goods were sold in contemporary sales at $40 than were sold in such sales at any other unit price.

Therefore, the reference sales are the sales at the unit price of $40.

(4) The following example illustrates the operation of paragraph (e) of the definition of **"reference sales"** in subsection (2):

Facts:

There was one contemporary sale of 10 units of comparable goods at a unit price of $60.

There were 2 contemporary sales of 2 units of comparable goods at a unit price of $20.

There was one contemporary sale of 6 units of comparable goods at a unit price of $20.

There were 8 contemporary sales of 1 unit of comparable goods at a unit price of $80.

There was one contemporary sale of 5 units of comparable goods at a unit price of $70.

There were 2 contemporary sales of 2 units of comparable goods at a unit price of $70.

There were 2 contemporary sales of 1 unit of comparable goods at a unit price of $50.

There were 2 contemporary sales of 4 units of comparable goods at a unit price of $50.

Result:

An equal number of units of comparable goods (10) were sold in contemporary sales at 3 unit prices ($60, $20, $50).

This number is not exceeded by 8 units of comparable goods sold in contemporary sales at $80 or by 9 units of comparable goods sold in contemporary sales at $70.

Therefore, reference sales are the sales at the unit price of $20.

Deductive (later sales) value

161D. (1) The deductive (later sales) value of imported goods is their value calculated as if the value of each of the units were the unit price of comparable goods sold in the reference sale or sales.

(2) In this section:

"later sale" , in relation to comparable goods compared with imported goods, means a sale known to a Collector of the comparable goods in Australia in the condition in which they were imported, being a sale:

(a) during the 90 days that began on the day of importation of the imported goods;

(b) at the first trade level at which the comparable goods were sold after their importation;

(c) in circumstances where, in the opinion of the Collector, the purchaser of the comparable goods:

  (i) was not, at the time of the sale, related to the vendor of the comparable goods; and

  (ii) did not incur any production assist costs in relation to the comparable goods; and

(d) was, in the opinion of the Collector, a sale of a sufficient number of units of comparable goods as to permit an appropriate determination of their price per unit;

"reference sale" , in relation to comparable goods, means:

(a) where there was only one later sale of the goods—that sale;

(b) where there were 2 or more such sales and one of them was on an earlier day than the other or others—that sale; or

(c) where there were 2 or more such sales on a common day and no such sale occurred on an earlier day:

  (i) if one of the sales on the common day was of a higher number of units of the comparable goods than the other or others on the common day—that sale of a higher number; or

  (ii) if 2 or more of the sales on the common day were of the same number of units of comparable goods and no other sale on the common day was of a higher number of such units—whichever of those 2 or more sales of the same number of units was the sale in which comparable goods were sold at the lower or lowest unit price;

"unit price" , in relation to comparable goods sold in a later sale, means the price of the goods in that sale:

(a) reduced by the sum of value unrelated amounts, deductible administrative costs, and deductible financing costs, in relation to the comparable goods; and

(b) divided by the number of units of the comparable goods.

Deductive (derived goods sales) value

161E. (1) The deductive (derived goods sales) value of imported goods is their value calculated as if the value of each of their units were the unit price of derived goods derived from them sold in the reference sale or sales.

(2) In this section:

"derived goods" , in relation to imported goods, means the imported goods after they have been assembled, packaged or further processed in Australia;

"derived goods sale" , in relation to derived goods derived from imported goods, means a sale known to a Collector of derived goods in Australia, being a sale:

(a) during the 90 days that began on the day of importation of the imported goods;

(b) at the first trade level at which the derived goods were sold after that importation;

(c) in circumstances where, in the opinion of the Collector, the purchaser of the derived goods:

(i) was not related to the vendor of the derived goods at the time of the sale; and

(ii) did not incur any production assist costs in relation to the derived goods; and

(d) that was, in the opinion of the Collector, a sale of a sufficient number of units of derived goods as to permit an appropriate determination of the price per unit of the goods;

"reference sale" , in relation to derived goods, means:

(a) where there was only one derived goods sale—that sale;

(b) where:

(i) there were 2 or more such sales; and

(ii) derived goods were sold in those sales at the one unit price;

each of those sales;

(c) where:

(i) there were 2 or more such sales;

(ii) the derived goods were sold in those sales at 2 or more unit prices; and

(iii) a higher number of units of derived goods were sold in those sales at one of those unit prices than were sold in those sales at any other single particular unit price;

the sale, or each of the sales, in which derived goods were sold at the particular unit price first-mentioned in subparagraph (iii);

(d) where:

(i) there were 2 or more such sales;

(ii) derived goods were sold in those sales at 2 or more unit prices; and

(iii) an equal number of units of derived goods were sold in those sales at each of those unit prices;

the sale or sales in which the derived goods were sold at the lower or lowest of the unit prices; and

(e) where:

(i) there were 2 or more such sales;

(ii) derived goods were sold in those sales at 2 or more unit prices; and

(iii) an equal number of units of derived goods were sold in those sales at 2 or more of those unit prices and that number was not exceeded by the number of units of derived goods sold in those sales at any other single particular unit price;

the sale, or sales, at which derived goods were sold at the lower or lowest of the unit prices first-mentioned in subparagraph (iii);

"unit price" , in relation to derived goods derived from imported goods and sold in a derived goods sale, means the price of the derived goods in that sale:

(a) reduced by the sum of:

(i) value unrelated amounts, in relation to the derived goods;

(ii) deductible administrative costs in relation to the derived goods;

(iii) deductible financing costs in relation to the derived goods; and

(iv) the amount of the value added to the derived goods that is attributable to the assembly, packaging or further processing of the imported goods in Australia; and

(b) divided by the number of units of the derived goods.

Computed value

161F. (1) The computed value of imported goods is such part of the sum of the following amounts as a Collector considers should be apportioned to their production:

(a) Australian arranged material costs;

(b) Australian arranged subsidiary costs;

(c) Australian arranged tooling costs;

(d) Australian arranged work costs;

(e) the value of all other goods used in their production and not included in paragraphs (a) to (d), inclusive;

(f) the costs, charges and expenses incurred by their producer in relation to their production and not included in paragraphs (a) to (e), inclusive;

(g) the profit and expenses (including all costs, direct or indirect, of marketing but not including costs and expenses included in paragraphs (a) to (f), inclusive) that are usually added to the sale for export to Australia of goods of the same class as the imported goods from the country of export of the imported goods, being a sale of goods by their producer to a purchaser who is not, at the time of sale, related to the producer;

(h) packing costs for materials and labour incurred in respect of the goods (including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the goods for their exportation from a foreign country or otherwise placing them in the condition in which they are imported into Australia but not including the costs of any exempted pallet or exempted container concerned in their exportation), being costs that are not included in paragraphs (a) to (g), inclusive;

(j) foreign inland freight and foreign inland insurance that is usually added to a sale referred to in paragraph (g) and that is not included in paragraphs (a) to (h), inclusive.

(2) In this section, **"Australian arranged material costs"** , **"Australian arranged subsidiary costs"** , **"Australian arranged tooling costs"** and **"Australian arranged work costs"** , in relation to imported goods, have the meanings that **"purchaser's material costs"** , **"purchaser's subsidiary costs"** , **"purchaser's tooling costs"** and **"purchaser's work costs"** respectively, would have, in relation to imported goods, if the references in the 4 last-mentioned definitions to purchaser were references to a person in Australia.

Fall-back value

161G. The fall-back value of imported goods is such value as a Collector determines, having regard to the other methods of valuation under this Division in the order in which those methods would ordinarily be considered under section 159 and of such other matters as the Collector considers relevant, but not having regard to any of the following matters:

(a) the selling price in Australia of goods produced in Australia;

(b) any system that provides for the acceptance for Customs purposes of the higher of 2 alternative values;

(c) the price of goods on the domestic market of the country from which the imported goods were exported;

(d) the cost of production of goods, other than the computed value of identical goods or similar goods;

(e) the price of goods sold for export to a country other than Australia and not imported into Australia;

(f) any system that provides for minimum values for Customs purposes;

(g) arbitrary or fictitious values.

When transaction value unable to be determined

161H. (1) Without limiting section 160, a Collector cannot determine the transaction value of imported goods for the purposes of this Division, including, but without limiting the generality of the foregoing, section 161A or 161B, if the Collector:

(a) after reasonable inquiry, is not aware of any import sales transaction in relation to the goods;

(b) has, in accordance with subsection (3), (5) or (7), decided that the transaction value of the goods cannot be determined; or

(c) is satisfied that the disposition or use of the goods by the purchaser is subject to restrictions, not being restrictions of the following kinds:

(i) restrictions imposed or required by, or by any public officer or authority acting in accordance with, any law in force in Australia;

(ii) restrictions that limit the geographical area in which the goods may be sold;

(iii) restrictions that do not substantially affect the commercial value of the goods.

(2) Where, in relation to goods required to be valued, a Collector:

(a) is satisfied that the purchaser and the vendor of imported goods were, at the time of the goods' import sales transaction, related persons; and

(b) considers that that relationship may have influenced the price of the goods;

the Collector shall, by notice in writing served, personally or by post, on the purchaser of the goods:

(c) advise the purchaser of:

(i) the view that the Collector has formed of the possible effect on the price of the goods of the relationship between the purchaser and the vendor;

(ii) the reasons for forming that view; and

(iii) the fact that, because of that view, the Collector may be required to decide under subsection (3) that the transaction value of the goods cannot be determined; and

(d) invite the purchaser to put before the Collector, within a period specified in the notice (not being a period of less than 28 days), such further information as the purchaser considers might serve to satisfy the Collector as to any of the matters set out in subsection (3).

(3) On the expiration of the period specified in a notice under subsection (2), the Collector shall, unless the purchaser of the imported goods has satisfied the Collector that:

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

(b) the amount of the transaction value that would be determined in respect of the goods if the purchaser and the vendor had not been related at the time of the import sales transaction for the goods divided by the number of the units of the goods closely approximates, having regard to all relevant factors:

(i) the unit price within the meaning of section 161A of identical goods that were exported to Australia about the same time as the imported goods;

(ii) the unit price within the meaning of section 161B of similar goods that were exported to Australia about the same time as the imported goods;

(iii) the unit price of identical goods or similar goods sold in a contemporary sale within the meaning of section 161C as determined in accordance with that section; or

(iv) the computed unit price of identical goods or similar goods that were imported into Australia about the same time as the imported goods being the computed value of those identical or similar goods determined in accordance with section 161F divided by the number of units of those identical or similar goods;

be taken to be unable to determine the transaction value of the goods.

(4) Where, in relation to goods required to be valued, a Collector is of the opinion that the price at which the goods were sold in their import sales transaction is different from the price at which goods that are identical goods or similar goods to the first-mentioned goods would normally be sold in an import sales transaction similar to the first-mentioned import sales transaction, the Collector shall, by notice in writing served, personally or by post, on the purchaser:

(a) advise the purchaser of the Collector's opinion; and

(b) require the purchaser to satisfy the Collector, within the period specified in the notice, not being a period of less than 28 days, that the price difference was not designed to obtain a reduction of, or to avoid duty.

(5) On the expiration of the period specified in a notice under subsection (4) in relation to imported goods, the Collector shall, unless the purchaser of the goods to whom the notice was given has satisfied the Collector as required by the notice, be taken to be unable to determine the transaction value of the goods.

(6) Where, in relation to services provided in respect of goods required to be valued, a Collector is of the opinion that the services were provided in relation to the goods under the terms of their import sales transaction at a price different from the price normally paid for the provision of identical or similar services in relation to goods that are identical goods or similar goods to the first-mentioned goods, sold in an import sales transaction similar to the first-mentioned import sales transaction, the Collector shall, by notice in writing served, personally or by post, on the purchaser:

(a) advise the purchaser of the Collector's opinion; and

(b) require the purchaser to satisfy the Collector, within the period specified in the notice, not being a period of less than 28 days, that the price difference was not designed to obtain a reduction of, or to avoid duty.

(7) On the expiration of the period specified in a notice under subsection (6) in relation to imported goods, the Collector shall, unless the purchaser of the goods to whom the notice was given has satisfied the Collector as required by the notice, be taken to be unable to determine the transaction value of the goods.

Value of goods to be in Australian currency

161J. **(1)** Where an amount that is, in accordance with this Division, required to be taken into account for the purpose of ascertaining a value of any imported goods is an amount in a currency other than Australian currency, the amount to be so taken into account shall be the equivalent in Australian currency of that amount, ascertained according to the ruling rate of exchange in relation to that other currency in respect of the day of exportation of the goods.

(2) For the purposes of this section, the Comptroller may specify, by notice published in the *Gazette*:

(a) a rate that is to be deemed to be, or to have been, the ruling rate of exchange, in relation to any currency, in respect of a day, or of each day occurring during a period, preceding the day of publication of the notice; or

(b) a rate that is to be deemed to be, or to have been, the ruling rate of exchange, in relation to any currency, in respect of each day occurring during a period commencing on the day of publication of the notice, or on an earlier day specified in the notice, and ending on the revocation of the notice;

after having regard:

(c) where the ruling rate of exchange is specified in respect of a day—to commercial rates of exchange that prevailed on or about that day;

(d) where the ruling rate of exchange is specified in respect of a period commencing before the day of publication of the notice—to commercial rates of exchange that prevailed during so much of that period as preceded the day of publication of the notice; and

(e) where the ruling rate of exchange is specified in respect of any other period—to commercial rates of exchange that last prevailed before the publication of that notice.

(3) At any time, the ruling rate of exchange in relation to a particular foreign currency, in respect of a particular day, shall be:

(a) if a rate of exchange has been specified at that time under subsection (2) as the ruling rate of exchange, in relation to that currency, in respect of that day, or in respect of a period that includes that day—the rate so specified; and

(b) if a rate of exchange has not been so specified at that time—such a rate of exchange as the Comptroller determines to be the ruling rate of exchange, in relation to that currency, in respect of that day, after having regard to commercial rates of exchange prevailing on or about that day and to such other matters as the Comptroller considers relevant.

(4) In this section:

"day of exportation" , in relation to imported goods, means:

(a) where the goods were exported by post from the place of export and a Collector is satisfied as to the day of posting—that day;

(b) where the goods departed or were transported from their place of export in any other way and a Collector is satisfied as to the day of their departure or transportation—that day; and

(c) in any other case—a day determined by the Collector.

Owner to be advised of value of goods

161K. (1) Where the Comptroller or a Collector has determined the customs value of goods in accordance with this Division, the Comptroller or the Collector shall cause the value to be recorded on the entry in respect of them or otherwise advise their owner of the amount.

(2) Where a Collector signifies, in a manner prescribed by the regulations, his or her acceptance of an estimate of the value of the goods, whether that estimate appears on the entry in respect of those goods or in any other statement of information provided in respect of those goods, the Collector shall, by so signifying, be taken for the purposes of subsection (1) to have determined the customs value of the goods and to have advised their owner of that amount.

(3) If, within 28 days after being advised under subsection (1) of the customs value of goods determined in accordance with this Division, an owner of the goods requests a Collector, in writing, to give the owner particulars of the valuation, the Collector shall, within 28 days after the making of the request, give the owner a notice in writing setting out:

(a) the method by which the customs value of the goods was determined;

(b) the findings of material questions of fact relating to that determination, the evidence or other material on which those findings were based and the reasons for that determination; and

(c) the calculations by which the determination of the value was made and the information on which those calculations were based.

(4) Nothing in this section requires, or permits, the giving of information that:

(a) relates to the personal affairs or business affairs of a person, other than the person making the request because of which information was given; and

(b) is information:

(i) that was supplied in confidence;

(ii) the publication of which would reveal a trade secret;

(iii) that was given in compliance with a duty imposed by an enactment; or

(iv) the giving of which in accordance with the request would be in contravention of an enactment, being an enactment that expressly imposes on the person to whom the information was given a duty not to divulge or communicate to any person, or to any person other than a person included in a prescribed class of persons, or except in prescribed circumstances, information of that kind.

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

Review of determinations and other decisions

161L. (1) At any time after the making of a determination or other decision by an officer under this Division in relation to goods, the 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 in accordance with this Division.

(2) Where, by reason that the Comptroller, under subsection (1), has varied or revoked a determination or other decision of an officer or has made a determination or other decision that is required to be made by reason of the revocation of a determination or other decision of an officer:

(a) an amount of duty that was levied is less than the amount that should have been levied; or

(b) an amount of duty that was refunded is greater than the amount that should have been refunded;

section 165 applies in relation to any demand by a Collector for the payment of the amount of duty so short levied or so erroneously refunded, as the case may be.

(3) In this section, **"officer"** means a Collector or a delegate of the 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 subsection.

(2A) Without limiting the generality of subsection (2), regulations under that subsection may provide that conditions, restrictions or requirements specified in the permission granted under subsection (1) in relation to goods are to be complied with in relation to the goods.

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

(a) the provisions of the regulations are complied with; and

(b) the goods are exported within a period of 12 months after the date on which the goods were imported or within such further period as the Comptroller, 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 Comptroller, the security may be enforced according to its tenor or, where an undertaking to pay the amount of the duty has been given that amount may be recovered at any time in a court of competent jurisdiction by proceedings in the name of the Collector.

Delivery of goods on the giving of a general security or undertaking for payment of duty

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

(a) goods of a specified class;

(b) goods imported by persons of a specified class;

(c) goods of a specified class imported by persons of a specified class; or

(d) goods imported for a specified purpose;

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

(1A) Without limiting the generality of subsection (1), regulations under that subsection may be regulations that apply to goods if:

(a) the goods are specified in an instrument authorised by the regulations; and

(b) conditions, restrictions or requirements specified in that instrument are complied with in respect of the goods.

(1B) Without limiting the generality of paragraph (1A) (b), conditions, restrictions or requirements referred to in that paragraph that apply to goods may specify, or relate to:

(a) the time during which the goods may remain in Australia; or

(b) the purposes for which the goods may be used while they are in Australia.

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

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

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

(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 Comptroller, 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 Comptroller 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 subsections (5) and (6) of section 162A.

Refunds etc. of duty

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

(a) in respect of goods generally or in respect of the goods included in a class of goods; and

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

(1A) The regulations may prescribe the amount, or the means of determining the amount, of any refund, rebate or remission of duty that may be made for the purposes of subsection (1).

(1B) A Collector shall refuse to consider an application for a refund of duty paid in respect of goods if:

(a) the goods are not goods in respect of which the same entry has been given under section 36 or 37; or

(b) the fee payable under subsection (1C) in respect of the application has not been paid.

(1C) Subject to subsection (1D), a fee of $200, or, if a higher amount is prescribed, that higher amount, is payable in respect of an application made after 13 May 1987 for a refund of duty paid in respect of goods.

(1D) A fee is not payable under subsection (1C):

(a) in the circumstances specified in paragraph 126 (a), (b), (c), (d), (f), (g), (ga), (h), (j), (k), or (m) of the Customs Regulations as in force at the commencement of this subsection;

(b) where an officer assisted in making up the entry in respect of which the application for a refund of duty is made;

(c) where an officer assessed the duty payable;

(d) where the duty was paid under protest;

(e) where the duty was paid as a consequence of advice given, or a ruling made, by an officer;

(f) where all duty amounts were paid in good faith;

(g) where the overpayment of duty was beyond the control of the applicant for the refund; or

(h) in such other circumstances as may be specified in the regulations.

(2) In this section, **"duty"** includes an amount paid to a Collector in respect of duty that may become payable.

Rebate of duty in respect of diesel fuel used for certain purposes

164. **(1)** A rebate is, subject to subsections (2) and (3) and to such conditions and restrictions as are prescribed (being conditions and restrictions that relate to goods generally, to goods included in a class of goods that includes diesel fuel or to diesel fuel only), payable to a person who purchases diesel fuel for use by him:

(a) in mining operations (otherwise than for the purpose of propelling a road vehicle on a public road);

(aa) in primary production (otherwise than for the purpose of propelling a road vehicle on a public road);

(b) at residential premises in:

(i) providing food and drink for;

(ii) providing lighting, heating, air-conditioning, hot water or similar amenities for; or

(iii) meeting other domestic requirements of;

residents of the premises;

(c) at a hospital or nursing home or at any other institution providing medical or nursing care; or

(d) at a home for aged persons.

(1A) An application under subsection (1) for rebate in respect of diesel fuel shall not be made before duty is paid on the diesel fuel.

(2) Where a person:

(a) purchases diesel fuel for use by him in a manner referred to in subsection (1); and

(b) uses the diesel fuel otherwise than in a manner referred to in that subsection;

then:

(c) if rebate has not been paid under subsection (1) to the person in respect of the diesel fuel—rebate is not payable to the person in respect of the diesel fuel; or

(d) if rebate has been paid under subsection (1) to the person in respect of the diesel fuel—the person shall, on demand in writing made by the Comptroller, pay to the Commonwealth an amount equal to the amount of rebate paid to him in respect of the diesel fuel and, if the person fails to pay to the Commonwealth the amount demanded within such period as is specified in the demand, the amount may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

(3) Subject to subsection (4), a Collector may refuse to consider an application for rebate under this section if:

(a) the application does not relate to diesel fuel purchased for use in a manner referred to in paragraph (1) (b); and

(b) the quantity of diesel fuel in respect of which the application is made is less than 2,000 litres.

(4) A Collector shall not refuse to consider an application made by a person for rebate under this section only because the quantity of diesel fuel in respect of which the application is made is less than 2,000 litres if the application is the first application by the person for rebate under this section.

(4AA) Rebate is not payable to a person in respect of diesel fuel unless the application for the rebate:

(a) is made in accordance with an approved form;

(b) includes such information as is required by the form;

(c) is signed and witnessed in the manner indicated in the form; and

(d) is given to an officer.

(4A) Without limiting the regulations that may be made for the purposes of subsection (1), those regulations may provide:

(d) subject to subsection (4B), that a rebate is not payable to a person in respect of diesel fuel purchased by the person unless, when the application for the rebate is given to a Collector, the applicant gives the Collector a document prepared by the seller, and relating to the sale, of the fuel (being an invoice or similar document, or, if the seller does not usually give such a document to purchasers of diesel fuel, a document of a prescribed kind) that contains information:

(i) required by the regulations; and

(ii) of a kind usually contained in invoices;

or a certified copy of the document; or

(e) that rebate is not payable to a person in respect of diesel fuel purchased by the person earlier than 12 months before the repeal of a particular regulation.

(4B) Where regulations for the purposes of subsection (1) provide that a rebate is not payable to a person in respect of diesel fuel unless the applicant for the rebate gives a Collector a document relating to the diesel fuel, then, notwithstanding those regulations, rebate may be granted to an applicant if:

(a) a Collector is satisfied that the applicant is unable to give the document because of circumstances beyond the applicant's control; and

(b) the applicant has given the Collector a statutory declaration verifying the matters that would be set out in the document.

(4C) Where a Collector is not satisfied that particulars, or estimates, relating to diesel fuel set out in an application by a person for rebate are correct, the Collector may:

(a) refuse to consider an application by that person for rebate the ascertaining of whose amount could be affected by those particulars or estimates; or

(b) approve the payment, as the only rebate referred to in paragraph (a), of such amount as the Collector, without having regard to those particulars or estimates but having regard to such matters relating to the use of diesel fuel by the person as are prescribed, considers to be appropriate.

(5) Subject to subsection (5AA), the rebate payable under subsection (1) to a person in respect of any diesel fuel purchased by the person for use in a manner referred to in a paragraph of that subsection is payable at the rate of:

(a) in the case of paragraph (1) (a)—$0.07619 per litre;

(b) in the case of paragraph (1) (aa)—$0.10007 per litre;

(c) in the case of paragraph (1) (b)—$0.07619 per litre;

(d) in the case of paragraph (1) (c)—$0.07619 per litre;

(e) in the case of paragraph (1) (d)—$0.07619 per litre.

(5A) The Minister may, by notice in writing published in the *Gazette*, declare that the rate of rebate payable under subsection (1) to a person in respect of any diesel fuel for use in a manner referred to in a paragraph of that subsection and specified in the notice is, on and after a day specified in the notice, a rate specified in the notice, being a rate higher than the rate specified in subsection (5) in relation to that paragraph, and, where the Minister makes such a declaration, the declaration has effect accordingly.

(5AA) The rebate payable to a person in respect of diesel fuel purchased by the person for use in a manner referred to in a paragraph of subsection (1) is payable at a rate equal to the average of the rates of rebate in relation to that paragraph in force on the last day of each of the 6 months immediately before the month in which the application for the rebate was received by a Collector, being:

(a) in relation to months ending before the commencement of this subsection—the rates under declarations made under subsection 164 (5A) of this Act as in force immediately before the commencement of this subsection; or

(b) in relation to other months—the rates in force under declarations made under subsection (5A).

(5AB) Where an average of rates referred to in subsection (5AA) has more than 5 decimal places, the rate equal to that average shall, for the purposes of that subsection, be taken to be:

(a) if the average calculated to 6 decimal places would end in a number less than or equal to 4—a rate equal to the average calculated to 5 decimal places; or

(b) if the average calculated to 6 decimal places would end in a number greater than 4—a rate equal to the average calculated to 5 decimal places increased by 0.00001.

(5B) The provisions of sections 48 (other than paragraphs (1) (a) and (b) and subsection (2)), 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to notices under subsection (5A) as if in those provisions references to regulations were references to notices, references to a regulation were references to a notice and references to repeal were a reference to revocation.

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

(7) In this section:

"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 subsection 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 farming of fish;

(c) the processing of fish on board vessels;

(d) pearling operations;

(e) the operation of a dedicated mother vessel in connection with the activities referred to in paragraphs (a), (b), (c) or (d); or

(f) the undertaking:

(i) of voyages to or from a port by a vessel for the purposes of refitting or repairing the vessel, or its equipment, for purposes that are integral to the performance of an activity referred to in paragraph (a), (b), (c), (d) or (e); or

(ii) trials in connection with such a refit or repair of a vessel or of its equipment;

but does not include any activity referred to in paragraph (a), (b), (c), (d), (e) or (f) that is conducted, in whole or in part:

(g) otherwise than for the purposes of a business; or

(h) for business purposes connected with recreation, sport or tourism;

"forestry" means:

(a) the planting or tending, in a forest or plantation, of trees intended for felling; or

(b) the thinning or felling, in a forest or plantation, of standing timber;

and includes:

(c) the transporting, milling or processing, in a forest or plantation, of timber felled in the forest or plantation;

(d) the milling of timber at a sawmill or chipmill that is not situated in the forest or plantation in which the timber was felled;

(e) where timber is milled at a sawmill or chipmill that is not situated in the forest or plantation in which the timber was felled—the transporting of the timber from the forest or plantation in which it was felled to the sawmill or chipmill; or

(f) the making and maintaining in a forest or plantation referred to in paragraph (a) or (b) of a road that is integral to the activities referred to in paragraph (a), (b) or (c);

"horticulture" includes:

(a) the cultivation or gathering in of fruit, vegetables, herbs, edible fungi, nuts, flowers, trees, shrubs or plants;

(b) the propagation of trees, shrubs or plants; or

(c) the production of seeds, bulbs, corms, tubers or rhizomes;

"live-stock" includes any animal reared for the production of food, fibres, skins, fur or feathers, or for its use in the farming of land;

"minerals" means minerals in any form, whether solid, liquid or gaseous and whether organic or inorganic;

"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;

(ca) other operations connected with the dressing or beneficiation of minerals, or ores bearing minerals, where that dressing or beneficiation is an integral part of the operation for the recovery of the minerals or of the ores, being operations that are carried out in, or at a place adjacent to, the area in which the dressing or beneficiation 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.

Diesel fuel rebate—notification of sale etc.

164A. Where a person who has made an application for rebate under subsection 164 (1) in respect of diesel fuel purchased by the person (whether or not the rebate has been paid) sells or otherwise disposes of the fuel, the person shall, within 21 days after the sale or disposal of the fuel, give a Collector particulars in writing of the sale or disposal.

Penalty: A fine not exceeding 5 times the amount of the rebate applied for in respect of the fuel of whose sale or other disposal particulars were required to be, and were not, given and not less than 2 times that amount.

Diesel fuel rebate—payment of penalty in lieu of prosecution

164AA. (1) Where a person:

(a) knowingly or recklessly obtains rebate referred to in subsection 164 (1) which is not payable; or

(b) in contravention of section 164A, fails to notify a Collector of the sale or other disposal of diesel fuel;

an officer may serve on the person a notice in writing:

(c) where paragraph (a) applies—specifying the amount of rebate that was not payable and demanding:

(i) repayment of that amount; and

(ii) payment of a penalty equal to 3 times that amount;

(d) where paragraph (b) applies—specifying the diesel fuel of whose sale or other disposal there has been a failure to notify the Collector and demanding:

(i) repayment of the amount of any rebate that has been paid under subsection 164 (1) in relation to that fuel and that was not payable; and

(ii) payment of a penalty equal to 3 times the amount of rebate applied for in respect of that fuel;

(e) setting out the terms of, or adequate particulars of the provisions of, subsection (2); and

(f) specifying the address at which payment of the amount demanded may be made under subsection (2).

(1A) Where a person, in an application for rebate under section 164:

(a) makes a statement that is false or misleading in a material particular; or

(b) omits from a statement any matter or thing without which the statement is misleading in a material particular;

an officer may serve on the person a notice in writing:

(c) setting out particulars of the false or misleading statement or of the omission by reason of which the statement is misleading;

(d) if any rebate has been paid—demanding repayment of so much of the rebate paid as exceeds the rebate that would have been paid but for the statement or omission;

(e) demanding payment of a penalty of:

(i) unless subparagraph (ii) or (iii) applies—3 times the amount by which the rebate applied for exceeds the rebate for which application might properly have been made;

(ii) if 3 times the excess referred to in subparagraph (i) would be less than \$100—\$100; or

(iii) if 3 times the excess referred to in subparagraph (i) would be more than \$5,000—\$5,000;

(f) setting out the terms of subsection (2); and

(g) specifying the address at which payment of the amount demanded may be made under subsection (2).

(2) Where:

(a) a notice is served on a person:

(i) under subsection (1), in relation to obtaining rebate or failing to notify a Collector of the sale or other disposal of diesel fuel; or

(ii) under subsection (1A), in relation to the making of a statement or the omission of any matter or thing from a statement; and

(b) the person pays to a Collector, at the address specified in the notice and within 21 days after the day on which the notice was served, the amount or amounts demanded in the notice;

proceedings shall not be brought for an offence against this Act in relation to the obtaining of the rebate, the failure to notify, the making of a statement or the omission from a statement of a matter or thing, as the case requires.

Refunds of export duty

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

Short paid duty etc. may be recovered

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

(2) For the purposes of subsection (1), a drawback of duty shall be deemed to be a refund of duty.

(3) Where a rebate of duty has been paid to a person and the whole or a part of the rebate was not payable to him, he shall repay the whole or that part, as the case may be, of the amount of rebate paid to him on demand being made by the Comptroller within 12 months from the date on which the rebate was paid.

(4) Where a court or the Administrative Appeals Tribunal determines, or an officer or employee of the Commonwealth performing duties in the Attorney-General's Department (being an officer or employee who is entitled, under section 55D of the *Judiciary Act 1903*, to practise as a barrister and solicitor in any Territory) advises, in writing, that, in particular circumstances, the rebate, or a part of the rebate, paid to a person in respect of diesel fuel used by that person should not have been so paid, the Comptroller shall not, under subsection (3):

(a) demand repayment of that rebate or that part of that rebate from that person; or

(b) demand repayment of any amount of rebate paid, in similar circumstances, to any other person who, by reason of the operation of that decision, would appear not to have been entitled to that amount;

unless the person referred to in paragraph (a) or (b):

(c) has been convicted of an offence against this Act in respect of the obtaining of that rebate; or

(d) has been required to pay a penalty under subsection 164AA (1) or (1A) in respect of the application for that rebate and has paid that penalty.

Diesel fuel rebate scheme set-offs

165A. (1) Subject to subsection (3), where at any time, a person is liable to repay to the Commonwealth an amount under subsection 164 (2) or 165 (3) in respect of a rebate of duty paid in relation to diesel fuel and, at the same time, the Commonwealth is liable to pay an amount to that person under section 164, the Comptroller shall, by notice in writing, set off the first-mentioned amount against the second-mentioned amount and, where he or she does so, then, with effect from the day of issue of that notice:

(a) if one amount is greater than the other—the lesser amount shall be taken to have been paid in full and the greater amount shall be taken to have been paid to the extent of the lesser amount; and

(b) if both amounts are equal—both amounts shall be taken to have been paid in full.

(2) Where the Comptroller effects a set-off by notice under subsection (1), he or she shall give a copy of the notice to the person affected by the set-off.

(3) Where the Comptroller becomes aware that a person who has been requested to pay an amount under subsection 164 (2) or 165 (3) in respect of a rebate of duty has made application under section 273GA (1) for review of that decision requesting payment of that amount:

(a) this section has no effect pending the final determination by the Administrative Appeals Tribunal, or by a Court on appeal from the Tribunal, of the review proceedings; and

(b) if it is determined, or ultimately determined, that the amount, or any part of the amount, is not payable, this section thereupon has effect only in respect of the part of the amount, if any, that is payable having regard to the determination of the Tribunal or Court.

No refund if duty altered

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

Division 4—Disputes as to Duty

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 (not being duty imposed under the *Customs Tariff (Anti-Dumping) Act 1975)*, the owner of the goods may pay under protest the sum demanded by the Collector as the duty payable in respect of the goods, and thereupon the sum so paid shall, as against the owner of the goods, be deemed to be the proper duty payable in respect of the goods, unless the contrary is determined in an action brought in pursuance of this section.

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

(3) 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 flight" in relation to an aircraft, means a flight in the course of which the aircraft takes off from a place outside Australia and lands at a place outside Australia and does not land at a place in Australia;

"prescribed ship" means a ship that is not currently engaged in making international voyages;

"prescribed voyage" , in relation to a ship, means a voyage in the course of which the ship travels between places outside Australia and does not call at a place in Australia.

(2) Except with the permission of a Collector or for the purpose of securing the safety of a ship or an aircraft or saving life, the owner or master of a prescribed ship shall not allow any goods to be transferred between the prescribed ship and:

(a) a ship that is engaged in making an international voyage or a prescribed voyage; or

(b) an aircraft that is engaged in making an international flight or a prescribed flight.

Penalty: $25,000.

(3) Except with the permission of a Collector or for the purpose of securing the safety of a ship or an aircraft or saving life, the owner or pilot of a prescribed aircraft shall not allow any goods to be transferred between the prescribed aircraft and:

(a) an aircraft that is engaged in making an international flight or a prescribed flight; or

(b) a ship that is engaged in making an international voyage or a prescribed voyage.

Penalty: $25,000.

(4) A Collector may, when giving permission referred to in subsection (2) or (3) or at any time while the permission is in force, impose conditions in respect of the permission, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts, and may, at any time, revoke, suspend, or vary, or cancel a suspension of, a condition so imposed.

(5) A condition imposed in respect of a permission under subsection (4) or a revocation, suspension, or variation, or a cancellation of a suspension, of such a condition takes effect when a notice, in writing, of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the person to whom the permission has been given or at such later time (if any) as is specified in the notice.

(6) The Collector may revoke a permission given under this section in relation to goods at any time before the goods are transferred.

(7) If, in relation to the transfer of any goods, a person required to comply with a condition imposed in respect of a permission under subsection (4) fails to comply with the condition, he is guilty of an offence against this Act punishable upon conviction by a penalty not exceeding $10,000.

PART XI—AGENTS

Division 1—Preliminary

Interpretation

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

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

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

"corporate customs agent" means a customs agent that is a company or a partnership;

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

"nominee" , in relation to a customs agent, means another customs agent whose name is endorsed on the agents licence held by the first-mentioned customs agent as a nominee of the first-mentioned customs agent;

"person" means a natural person, a company or a partnership;

"prescribed offence" means:

(a) an offence against this Act; or

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

(2) A reference in this Part, other than in subsection 181 (2), 183CC (5), 183CJ (1), 183CQ (4), (5) or (7) or 183CR (3) or in section 183CS, 183D, 183DA, 183DC, 183DD or 183S, to the 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

Authorised agents

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

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

(a) a natural person who is an employee of the owner and is not an employee of any other person; or

(b) a customs agent at that place.

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

(a) except where the agent is a corporate customs agent—that agent; or

(b) where the agent is a customs agent—a nominee of that agent who is a customs agent at that place.

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

(a) do any act or thing in relation to the goods that is required or permitted to be done by the owner of the goods under the Customs Acts; or

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

(5) A person who contravenes subsection (4) is guilty of an offence punishable upon conviction by a penalty not exceeding $1,000.

Authority to be produced

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

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

Agents personally liable

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

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

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

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

Principal liable for agents acting

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

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

Division 3—Licensing of customs agents

Interpretation

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

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

(a) he has authority as a nominee of, or as an agent, officer or employee of, the customs agent, to do any act or thing for the purposes of the Customs Acts on behalf of an owner of goods; or

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

Grant of licence

183C. **(1)** Subject to this Part, the 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;

(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 subparagraph 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 subparagraph 183CC (1) (a) (ii) and section 183CD as will enable him adequately to consider those matters; and

(f) contain such other information as is prescribed.

(2) Where a person makes an application, he shall not propose a person as his nominee at a place unless, at the time the application is made, that person is eligible, or intends to take all necessary action to ensure that, if an agents licence is granted to the applicant, he will be eligible, to be a nominee of the applicant at that place.

(3) A person shall not be proposed under paragraph (1) (c) unless he has consented, in writing, to the proposal.

Reference of application to Committee

183CB. (1) Where the 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 subsection (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;

(b) where the application is made by a company:

(i) a director of the company who would participate in the work of the company if it were a customs agent is not a person of integrity;

(ii) an officer or employee of the company who would participate in the work of the company if it were a customs agent is not a person of integrity; or

(iii) the company is not a fit and proper company to hold an agents licence; or

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

(i) a partner in the partnership is not a person of integrity; or

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

(2) For the purposes of subsection (1), an applicant shall be taken to be qualified to be a customs agent if, and only if:

(a) except where he has been exempted under subsection (3), he has completed a course of study or instruction approved under subsection (5); and

(b) he has acquired experience that, in the opinion of the 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 subsection (1), have regard to:

(a) any conviction of the person for a prescribed offence committed within the 10 years immediately preceding the making of the application;

(b) whether the person is an undischarged bankrupt;

(c) any misleading statement made in the application by or in relation to the person; and

(d) where any statement by the person in the application was false—whether the person knew that the statement was false.

(4A) The Comptroller shall, in determining whether a company is a fit and proper company to hold an agents licence for the purposes of subparagraph (1) (b) (iii), have regard to:

(a) any conviction of the company for an offence against this Act committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;

(b) any conviction of the company for an offence under a law of the Commonwealth, of a State or of a Territory that is punishable by a fine of $5,000 or more, being an offence committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;

(c) whether a receiver of the property, or part of the property, of the company has been appointed;

(d) whether the company has been placed under official management; and

(e) whether the company is being wound up.

(5) The Comptroller 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

(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 subsection (1), endorse a licence so as to show a person as a nominee of a customs agent at a place if that person is not eligible to be a nominee of that customs agent at that place.

Variation of licences

183CF. **(1)** Subject to subsection (3), the 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 subsection (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 subsection 183C (2).

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

Licence granted subject to conditions

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

(a) the holder of the licence is convicted of a prescribed offence;

(b) in the case of a licence held by a natural person—the holder of the licence becomes bankrupt; or

(c) in the case of a licence held by a company—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.

(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 2 months before the date on which his or her agents licence is due to expire, applies in writing to the Comptroller, or to a Collector of Customs for a State or Territory, for the renewal of the licence:

(a) if the application is made to the Comptroller—the Comptroller or the Collector to whom the Comptroller refers the application; or

(b) if the application is made to a Collector—the Comptroller or that Collector;

shall, by writing, renew the licence unless:

(c) the Comptroller has given an order under paragraph 183CS (1) (d) in relation to the licence; or

(d) the customs agent is, because of section 183CK, not entitled to hold an agents licence.

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

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

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

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

Security

183CK. (1) The 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 subsection (1) in an amount specified in the notice, being an amount not exceeding the amount so prescribed, and, if the customs agent fails to comply with the notice, the customs agent shall not be entitled to hold an agents licence.

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

(4) Where, by virtue of subsection (1) or (2), a customs agent is not entitled to hold an agents licence, the 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 subsection (1) may include an amount calculated with regard to the cost of the establishment, administration and operation of the Committee.

Nominees

183CM. For the purposes of this Part, a person shall be taken to be a nominee of a customs agent from the time when the name of the nominee is endorsed, in pursuance of paragraph 183CE (1) (b) or of section 183CF, on the licence of the customs agent until the nominee dies or until the Comptroller 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 subsection (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 subsection 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 subsection.

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 subsection 183CG (8) in relation to the non-compliance with that condition, the customs agent has not, within the time specified in the notice, complied with that condition; or

(j) the customs agent has not, within the time specified in a notice under section 183CP, complied with that notice;

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

(2) Without limiting the generality of paragraph (1) (d), a customs agent shall be taken, for the purposes of that paragraph, to have ceased to perform the duties of a customs agent in a satisfactory and responsible manner if the documents prepared by the customs agent for the purposes of this Act contain errors that are unreasonable having regard to the nature or frequency of those errors.

(3) Notice in accordance with this section to a customs agent shall be in writing and shall be served, either personally or by post, on the customs agent.

(4) A notice in accordance with this section to a customs agent shall state:

(a) the grounds on which the notice is given;

(b) that the person who gave the notice intends forthwith to refer to the Committee, for investigation and report to the Comptroller, the question whether the Comptroller should take action in relation to the licence under subsection 183CS (1);

(c) the powers that the Comptroller may exercise in relation to a licence under subsection 183CS (1); and

(d) the rights of the customs agent under sections 183J and 183S to take part in the proceedings before the Committee.

(5) Where the Comptroller, or a Collector of Customs for a State or Territory, gives notice in accordance with this section to a customs agent, he shall refer the question whether the Comptroller should take action in relation to the licence under subsection 183CS (1) to the Committee, for investigation and report to the Comptroller.

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

(7) Where a question is referred to the Committee under subsection (5), the Committee shall, as soon as practicable, conduct an investigation and make a report on the question to the Comptroller.

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.

(2) The Comptroller may suspend the agents licence of a customs agent in pursuance of subsection (1) by:

(a) including in the notice to the customs agent in accordance with section 183CQ a statement to the effect that the licence is suspended under that subsection; or

(b) giving further notice in writing to the customs agent to the effect that the licence is suspended under that subsection.

(3) A suspension of a licence by the Comptroller, or by a Collector of Customs for a State or Territory, under subsection (1) has effect until the suspension is revoked by the Comptroller, or by a Collector of Customs for a State or Territory, or the Comptroller 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 Comptroller

183CS. **(1)** Where the Comptroller, after considering a report under subsection 183CQ (7) in relation to an agents licence, is:

(a) satisfied in relation to the licence as to any of the matters mentioned in paragraphs (a) to (j) (inclusive) of subsection 183CQ (1); or

(b) satisfied on any other grounds that it is necessary to do so for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts;

he may, by notice to the customs agent:

(c) cancel the licence;

(d) if the licence is about to expire—order that the licence not be renewed;

(e) reprimand the customs agent;

(f) in a case where the licence is not already suspended—suspend the licence for a period specified in the notice; or

(g) in a case where the licence is already suspended—further suspend the licence for a period specified in the notice.

(2) Where the Comptroller, after considering a report under subsection 183CQ (7) in relation to an agents licence, decides not to take any further action in the matter, he shall, by notice in writing to the customs agent, inform the customs agent accordingly, and, if the licence of the customs agent is suspended, he shall revoke the suspension.

(3) A notice under subsection (1) shall:

(a) be in writing; and

(b) be served, either personally or by post, on the holder of the licence.

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

(5) Where the Comptroller 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, or a Collector of Customs for a State or Territory, under section 183CB;

(b) to investigate and report on questions referred to it by the Comptroller, or a Collector of Customs for a State or Territory, under section 183CQ;

(c) to advise the Comptroller in relation to the approval of courses of study under section 183CC; and

(d) where the Comptroller requests the Committee to advise him on the standards that customs agents should meet in the performance of their duties and obligations as customs agents—to advise the Comptroller 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 Comptroller, 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 Comptroller 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 Comptroller, 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 Comptroller specifies, in writing signed by him, to be the office for the purposes of this subsection.

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

Remuneration and allowances

183DB. (1) A member referred to in paragraph 183DA (1) (a) or (b) shall be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A member referred to in paragraph 183DA (1) (a) or (b) shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Acting Chairman

183DC. (1) Subject to subsection (2), the Comptroller may appoint a person to act as Chairman:

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

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

(2) A person shall not be appointed to act as Chairman unless he is qualified, in accordance with subsection 183DA (2), to be appointed as Chairman.

(3) A person appointed to act as Chairman shall be paid such fees, allowances and expenses as the Comptroller determines.

Deputy member

183DD. (1) The Comptroller may appoint a person, on the nomination of an organization referred to in subsection 183DA (4), to be the deputy of the member referred to in paragraph 183DA (1) (b) during the pleasure of the Comptroller 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 Comptroller specifies an office in the Department for the purposes of this subsection, the person for the time being holding, or performing the duties of, that office shall be the deputy of the member referred to in paragraph 183DA (1) (c) and that person shall, in the event of the absence of that member from a meeting of the Committee, be entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Committee.

(3) A deputy of the member referred to in paragraph 183DA (1) (b) shall be paid such fees, allowances and expenses as the Comptroller determines.

Procedure of Committees

183E. The regulations may make provision for and in relation to the procedure of the Committee.

Evidence

183F. The Committee is not bound by legal rules of evidence but may inform itself on a matter referred to it under this Part in such manner as it thinks fit.

Proceedings in private

183G. The proceedings of the Committee shall be held in private.

Determination of questions before a Committee

183H. All questions before the Committee shall be decided according to the opinion of the majority of its members.

Customs agent affected by investigations to be given notice

183J. **(1)** Where an application is referred to the Committee under section 183CB or a question is referred to the Committee under section 183CQ, the Chairman of the Committee shall cause a notice in writing of the reference of the application or question to the Committee, and of the time and place at which the Committee intends to hold an inquiry into the application or question, to be served on the person making the application or holding the licence to which the question relates, as the case may be, at least ten days before the date of the inquiry.

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

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

(4) Where an application is referred to the Committee under section 183CB or a question is referred to the Committee under section 183CQ, the Chairman of the Committee may cause a notice in writing of the reference of the application or question to the Committee, and of the time and place at which the Committee intends to hold an inquiry into the application or question, to be served on such other persons who, in the opinion of the Chairman, have a special interest in, or are specially affected by, the inquiry.

Summoning of witnesses

183K. **(1)** The Chairman of the Committee may, by writing under his hand, summon a person to attend before the Committee at a time and place specified in the summons and then and there to give evidence and to produce any books, documents and writings in his custody or control which he is required by the summons to produce.

(2) A person who has been summoned to attend before the Committee as a witness shall appear and report himself from day to day, unless excused by the Committee.

(3) The Committee may inspect books, documents or writings before it, and may retain them for such reasonable period as it thinks fit, and may make copies of such portions of them as are relevant to the inquiry.

Service of notices and summonses

183L. A notice or summons under this Part shall be served by delivering it personally to the person to be served or by sending it by prepaid registered letter addressed to him at his last known place of abode or business or by leaving it:

- (a) at his last known place of abode with some person apparently an inmate of that place and apparently not less than 16 years of age; or
- (b) at his last known place of business with some person apparently employed at that place and apparently not less than 16 years of age.

Committee may examine upon oath or affirmation

183N. **(1)** The Committee may examine on oath a person appearing as a witness before the Committee, whether the witness has been summoned or appears without being summoned, and for that purpose a member of the Committee may administer an oath to a witness.

(2) Where a witness conscientiously objects to take an oath, he may make an affirmation that he conscientiously objects to take an oath and that he will state the truth, the whole truth and nothing but the truth to all questions that are asked him.

(3) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

Offences by witness

183P. A person summoned to attend before the Committee as a witness shall not:

(a) without reasonable cause fail to attend, after payment or tender to him of a reasonable sum for his expenses of attendance;

(b) refuse to be sworn or to make an affirmation as a witness, or to answer any question when required to do so by a member of the Committee; or

(c) without reasonable cause, refuse or fail to produce a book or document which he was required by the summons to produce.

Penalty: $1,000.

Statements by witness

183Q. A person is not excused from answering a question or producing a book or document when required to do so under section 183P on the ground that the answer to the question, or the production of the book or document, might tend to incriminate him or make him liable to a penalty, but his answer to any such question is not admissible in evidence against him in proceedings other than proceedings for:

(a) an offence against paragraph 183P (b) or (c); or

(b) an offence in connection with the making by him of a statement in an examination before the Committee under section 183N.

Witness fees

183R. **(1)** A person who attends in obedience to a summons to attend as a witness before the Committee is entitled to be paid witness fees and travelling allowance according to the scale of fees and allowances payable to witnesses in the Supreme Court of the State or Territory in which he is required to attend or, in special circumstances, such fees and allowances as the Chairman of the Committee directs (less any amount previously paid to him for his expenses of attendance).

(2) The fees and allowances are payable:

(a) in the case of a witness summoned at the request of the customs agent to whom the inquiry relates—by that customs agent; and

(b) in any other case—by the Commonwealth.

Representation by counsel etc.

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

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

Protection of members

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

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

Protection of barristers, witnesses etc.

183U. (1) A barrister, solicitor or other person appearing before the Committee has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(2) A witness summoned to attend or appearing before the Committee has the same protection as a witness in proceedings in the High Court.

PART XII—OFFICERS

Division 1—Powers of Officers

Power to pursue ships and aircraft

184. (1) Where the master of a ship refuses or fails to comply with a request under subsection 59 (1) or (2) to permit the ship to be boarded, the person in command of any ship in the service of the Commonwealth on which the prescribed ensign of the ship is flying or of any aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is or are displayed may use his ship or aircraft to chase, and, after firing a gun as a signal, fire at or into, the first-mentioned ship in order to compel it to be brought to for boarding.

(2) Where the pilot of an aircraft refuses or fails to comply with a request under subsection 59 (4) to land the aircraft for boarding, the person in command of any aircraft in the service of the Commonwealth on which the prescribed ensign or prescribed insignia of the aircraft is or are displayed may use his aircraft to chase, and, after firing a gun as a signal, fire at or into, the first-mentioned aircraft in order to compel it to be landed for boarding.

Search etc. of ships and aircraft near Australia

185. (1) This section applies in relation to, and only in relation to, a ship the master of which has been requested to permit the ship to be boarded pursuant to subsection 59 (1) or (2) or an aircraft that has been landed for boarding following a request under subsection 59 (4).

(2) An officer may:

(a) board and search the ship or aircraft;

(b) search any goods found on the ship or aircraft;

(c) require all persons found on the ship or aircraft to answer questions, and produce any documents in their possession, in relation to:

  (i) the ship or aircraft, its voyage or flight and its cargo, stores, crew and passengers; or

  (ii) the presence of those persons on the ship or aircraft; and

(d) arrest without warrant any person found on the ship or aircraft who he believes on reasonable grounds has committed, is committing or attempting to commit, or is otherwise concerned in the commission of, an offence against this Act.

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

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

Penalty: $1,000.

(5) In this section, **"officer"** includes any person who is in command, or a member of the crew, of the ship or aircraft from which the relevant request under section 59 was made or of any ship or aircraft that was used under section 184 to chase the ship or aircraft in relation to which this section applies.

(6) In this section:

(a) a reference to a person found on the ship or aircraft includes a reference to a person suspected on reasonable grounds by an officer of having landed from or left the ship or aircraft; and

(b) a reference to goods found on the ship or aircraft includes a reference to goods suspected on reasonable grounds by an officer of having been removed from the ship or aircraft.

Examine all goods

186. Any officer may open packages and examine weigh mark and seal any goods subject to the control of the Customs, and the expense of the examination including the cost of removal to the place of examination shall be borne by the owner.

Power to board and search

187. An officer may:

(a) board any ship or aircraft;

(b) board any Australian resources installation:

  (i) that is subject to the control of the Customs;

  (ii) at which there is a ship or aircraft that has come to the installation from 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 a resources installation (other than an Australian resources installation) in respect of which permission under section 5A has been granted;

(d) board any Australian sea installation:

  (i) that is subject to the control of Customs;

(ii) at which there is a ship or aircraft that has come to the installation from parts beyond the seas; or

(iii) on which an officer has reasonable grounds to believe there are goods that are subject to the control of the Customs;

(e) board a sea installation (other than an Australian sea installation) in respect of which permission under section 5B has been granted;

(f) search any ship or aircraft or an installation of the kind referred to in paragraph (b), (c), (d) or (e); or

(g) secure any goods on any ship or aircraft or on any installation of the kind referred to in paragraph (b), (c), (d) or (e).

Boarding

188. The power of an officer to board shall extend to staying on board any ship, aircraft or installation and the Collector may station an officer on board any ship, aircraft or installation, and the master or pilot shall provide sleeping accommodation in the cabin and suitable and sufficient food for such officer.

Penalty: $500.

Searching

189. The power of an officer to search shall extend to every part of any ship, aircraft or installation, and shall authorize the opening of any package, locker, or place and the examination of all goods.

Securing goods

190. The power of an officer to secure any goods shall extend to fastening down hatchways and other openings into the hold and locking up, sealing, marking or otherwise securing any goods.

Seals etc. not to be broken

191. No fastening, lock, mark, or seal placed by an officer upon any goods or upon any door hatchway opening or place upon any ship, aircraft or installation shall be opened, altered, broken or erased, except by authority, whilst the goods upon which the fastening, lock, mark, or seal is placed or which are intended to be secured thereby shall remain subject to the control of the Customs.

Penalty: $5,000.

Seals etc. on ship or aircraft in port bound to another port within Commonwealth

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

Penalty: $5,000.

Officers may patrol coasts etc.

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

Ships on service may be moored in any place

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

Power to question passengers etc.

195. **(1)** An officer of Customs may question:

(a) any person who is on board a ship or an aircraft or an installation of the kind referred to in paragraph 187 (b), (c), (d) or (e);

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

(c) any person who the officer has reason to believe is about to board a ship or an aircraft;

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

(d) dutiable goods;

(e) excisable goods;

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

(g) goods the importation or exportation of which is subject to restrictions, or to compliance with any conditions, under this Act or any other law of the Commonwealth.

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

Penalty: $1,000.

Suspected persons—detention and search

196.[3 and 4] If any officer of Customs included in a class of officers declared by the Comptroller, by writing signed by him or her, to be a class of officers for the purposes of this section or any officer 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) An 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 the suspected person shall only be searched by an officer of Customs or of police who is of the same sex as the suspected person.

196A. and 196B.[4] * * * * *

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 subsection (1).

Penalty: $1,000.

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

(a) detain the person for the purposes of establishing his identity; or

(b) if the officer believes on reasonable grounds that there is no reasonable excuse for the person refusing or failing to so comply, detain the person and take him, without undue delay, before a magistrate to be charged with an offence against subsection (2).

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

Power to stop vehicles

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

Penalty: $1,000.

Power to stop and search carriages carrying petrol etc.

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

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

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

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

(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: $1,000.

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 subsection 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. 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: $1,000.

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 subsection (2), the power to seize goods under that subsection may be exercised at sea or in any other waters.

Seizure of protected objects

203A. **(1)** In this section:

"inspector" has the same meaning as in the Act;

"Minister" means the Minister administering the Act;

"the Act" means the *Protection of Movable Cultural Heritage Act 1986*.

(2) Where:

(a) the Minister is of the opinion that a particular object may become forfeited by virtue of section 9 of the Act; or

(b) a foreign country has requested the return of a particular object exported from that country and the Minister is of the opinion that the object may become liable to forfeiture by virtue of section 14 of the Act;

the Minister may issue a notice in writing to the Comptroller to that effect.

(3) An officer may seize a protected object or any object that the officer believes on reasonable grounds is a protected object, being an object that is subject to the control of the Customs.

(4) Where an officer seizes an object under subsection (3), the officer shall forthwith deliver the object into the custody of an inspector.

Seized goods to be secured

204. **(1)** In this section, **"approved place"** , in relation to goods, means a place approved by a Collector as a place for the storage of 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 section 203, 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 section 203, 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 section 203, 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 subsection (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 subsection 204 (3); or

(b) in relation to narcotic-related goods—the member of the Australian Federal Police who seized the goods or to whom the goods were delivered under subsection 204 (4).

(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 subsection (6); and

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

(3) If a notice under subsection (2) in respect of a ship or aircraft cannot conveniently be served in a manner required by that subsection, 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 subsection (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 subsection (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 subsection (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 subsection (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 subsection (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 subsection (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 subsections 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 subsection 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 subsection 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 subsection (1) or (2) shall specify the value of those goods.

(4) For the purposes of the Customs Acts, the value of goods delivered under subsection (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 subsection (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 subsection (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 subsection 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 subsection (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 subsection 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 subsection 205 (6) or (7) or subsection 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), (o), (p) or (q) (including forfeited by virtue of the operation of any of those paragraphs and section 230), other than goods that are prohibited imports.

(2) Subject to subsection (3), where an officer finds goods that are, or that he has reason to believe are, goods to which this section applies in the course of a search of the baggage of a person who has arrived in Australia from a place outside Australia, the officer may, in lieu of seizing the goods under section 203, impound the goods.

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

(3A) Subject to subsection (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 subsection (2), the officer may, in lieu of seizing the goods under that section, impound the goods.

(3B) An officer shall not exercise his powers under subsection (3A) to impound goods if, in the opinion of the officer, the amount of duty sought to be evaded in respect of the goods exceeds $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 subsection (2), that the article, articles or goods so identified have been impounded under that subsection; or

(v) where the goods were impounded under subsection (3A), that the article, articles or goods so identified have been impounded under that subsection;

(b) setting out the amount of duty demanded in respect of the article, each of the articles, or the goods, identified in the notice;

(c) setting out the date on which the goods were impounded;

(d) setting out the terms of, or adequate particulars of the provisions of, subsections (6) and (7); and

(e) specifying the address at which payment under subsection (6) may be made in respect of the goods.

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

(a) where the notice states that the goods were impounded under subsection (2)—an amount specified in the notice, being an amount equal to the amount of that duty that, in the opinion of the officer issuing the notice, the owner has sought to evade; or

(b) where the notice states that the goods were impounded under subsection (3A)—an amount specified in the notice, being an amount equal to twice the amount of that duty that, in the opinion of the officer issuing the notice, the owner has sought to evade;

the following provisions apply:

(c) the Collector shall authorize the delivery of the article or goods to the owner;

(d) the article ceases, or the goods cease, to be forfeited; and

(e) proceedings shall not be brought for an offence against this Act in relation to the importation of the article or goods.

(7) Where the owner of an article or goods identified in a notice served under subsection (5) does not pay duty and penalty in respect of the article or goods in accordance with subsection (6), the article or goods 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 subsection (5), such a notice posted as a letter addressed to the owner at his last address known to the officer required to serve the notice shall be deemed to be properly addressed.

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

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

Persons suspected of smuggling etc.

210. (1) An officer of Customs or police may without warrant arrest any person who he has reasonable grounds to believe is guilty of:

(a) committing, or attempting to commit, or of being concerned in the commission of, any offence against section 231 or 233; or

(b) committing an offence against section 233B.

(1A) An officer of Customs or police may, without warrant, arrest a person if he has reasonable ground for believing that the person has committed the offence of assaulting an officer in the execution of his duties.

(2) No person shall resist, obstruct, or prevent the arrest of any person in pursuance of this section.

Penalty: $1,000.

Arrested persons to go before Justices

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

Powers of Justices with offenders

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

(1) Commit such person to gaol until he can be brought before Justices to be dealt with according to law; or

(2) Admit him to bail upon his giving sufficient security for his appearance before Justices at the time and place appointed for the hearing of the charge.

Production of documents etc. 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 to inspect commercial documents under a section 39 authorisation

214AA. (1) Where:

(a) a person has been authorised to deal with goods under section 39 subject to the condition that an officer of Customs may require verification of information supplied in connection with an entry of those goods; and

(b) the Comptroller or Collector has reasonable grounds to believe that there are on any premises, other than residential premises, occupied by that person in the course of his or her business, commercial documents relating to that information;

an authorised officer:

(c) may, at all reasonable times, enter and remain on those premises;

(d) is entitled to full and free access at all reasonable times to any such documents on those premises; and

(e) may inspect, examine, make copies of, or take extracts from, any such documents on those premises;

for the purpose of verifying that information.

(2) An authorised officer is not entitled to enter on any premises under this section unless, before so doing, the officer produces to the person occupying, or apparently in charge of, the premises written evidence of the fact that he or she is an authorised officer.

(3) The person occupying, or apparently in charge of, premises entered by an officer under subsection (1) shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: $1,000.

Powers of officers to inspect commercial documents in other circumstances

214AB. (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises and exercise the powers of an authorised officer under this section in relation to those premises.

(2) Where the Comptroller or a Collector has reasonable grounds for believing that there are on any premises commercial documents relating to information that was supplied to a Collector for purposes connected with the entry of goods, the Comptroller or that Collector may make an application to a Magistrate for a warrant authorising an authorised officer who is nominated for the purpose to enter the premises and to exercise the powers of an authorised officer under this section in relation to those premises.

(3) If, on an application under subsection (2), the Magistrate is satisfied, by information on oath or affirmation, that:

(a) there is reasonable ground for believing that there are on the premises the subject of the application commercial documents of the kind referred to in subsection (2); and

(b) the occupier of the premises has not given consent for an authorised officer to enter the premises and exercise the powers of an authorised officer under this section in relation to those premises;

the Magistrate shall grant a warrant authorising the nominated authorised officer, with such assistance as the officer thinks necessary and if necessary by force, to enter the premises, during such hours of the day or night as the warrant specifies, or, if the warrant so specifies, at any time, and to exercise the powers of an authorised officer under this section in relation to those premises.

(4) There shall be included in a warrant issued under this section:

(a) a statement of the purpose for which the warrant is issued; and

(b) the time, not being a time more than 30 days after the day of issue of the warrant, at which the warrant ceases to have effect.

(5) Where premises entered by an authorised officer under this section are occupied at the time of the entry, the person occupying, or apparently in charge of, the premises shall provide the officer with all reasonable facilities and assistance for the effective exercise of his or her powers under this section.

Penalty: $1,000.

(6) An authorised officer who has entered premises under a warrant shall, upon request of a person occupying, or apparently in charge of, the premises, produce the warrant for inspection by that person.

(7) The powers of an authorised officer under this section in relation to premises are:

(a) to search the premises for commercial documents relating to the entry of the goods concerned; and

(b) to inspect, examine, make copies of, or take extracts from, any such documents found on those premises.

Warrants may be granted by telephone etc.

214AC. **(1)** Where, by reason of circumstances of urgency, the Comptroller or a Collector considers it necessary to do so, he or she may make an application for a warrant under subsection 214AB (2) by radio, telephone or other means of communication, in accordance with this section.

(2) Before so making application, the Comptroller or a Collector shall prepare an information of a kind referred to in subsection 214AB (3) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.

(3) Where a Magistrate to whom an application under subsection (1) is made is satisfied:

(a) after having considered the terms of the information prepared in accordance with subsection (2); and

(b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate shall complete and sign such a search warrant as the Magistrate would issue under section 214AB if the application had been made in accordance with that section.

(4) Where a Magistrate signs a warrant under subsection (3):

(a) the Magistrate shall inform the Comptroller or a Collector of the terms of the warrant and the date on which and the time at which it was signed, and record on the warrant the reasons for the granting of the warrant; and

(b) the Comptroller or a Collector shall complete a form of warrant in the terms furnished to him or her by the Magistrate and write on it:

(i) the name of the Magistrate;

(ii) the date on which and the time at which the warrant was signed; and

(iii) particulars of a means of communication with the Magistrate nominated by the Magistrate for purposes of verifying the issue of the warrant.

(5) Where the Comptroller or a Collector completes a form of warrant in accordance with subsection (4), he or she shall, not later than the day next following the last day on which the warrant has effect, forward to the Magistrate who signed the warrant the form of warrant completed by the Comptroller or a Collector and the information duly sworn in connection with the warrant.

(6) Upon receipt of the documents referred to in subsection (5), the Magistrate shall attach to them the warrant signed by the Magistrate and deal with the documents in the manner in which the Magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 214AB.

(7) A form of warrant duly completed by the Comptroller or a Collector in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the Magistrate, authority for any entry of an authorised officer of premises specified in the warrant, and for the exercise by the authorised officer of the powers of an authorised officer as set out in subsection 214AB (7) in relation to those premises.

(8) An authorised officer who has entered premises under authority of a warrant issued under this section shall, upon request of a person occupying, or apparently in charge of, the premises, produce a form of the warrant that authorised that entry, duly completed by the Comptroller or a Collector in accordance with subsection (4), for inspection by that person.

(9) Where it is material, in any proceedings, for a court to be satisfied that an entry of premises or the exercise of the powers of an authorised officer within the meaning of subsection 214AB (7) was authorised in accordance with this section, and the warrant signed by a Magistrate in accordance with this section authorising the entry or exercise of those powers is not produced in evidence, the court shall assume, unless the contrary is proved, that the entry or exercise of those powers was not authorised by such a warrant.

Powers of officers for purposes of section 164

214A. (1) For the purposes of section 164 or of regulations made for the purposes of that section, an authorized officer may, at all reasonable times, enter:

(a) premises where diesel fuel is used or stored; or

(b) premises where there are kept any accounts, books, or other records relating to the purchase, sale or use of diesel fuel;

and may:

(c) inspect or take stock of any diesel fuel; and

(d) inspect any such accounts, books, documents or other records;

and may make and retain copies of, or take and retain extracts from, any such accounts, books, documents or other records.

(2) Where an authorized officer proposes to enter any premises under subsection (1), he shall, if requested to do so by the occupier or person in charge of the premises, produce for inspection written evidence of the fact that he is an authorized officer and, if he fails to do so, he is not authorized to enter the premises.

(3) The occupier or person in charge of premises referred to in paragraph (1) (a) or (b) shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his powers under subsection (1).

Penalty: $1,000.

(4) An authorized officer may, by notice signed by him, require a person whom he believes to be capable of giving information that is relevant to the operation of section 164 or of regulations made for the purposes of that section and relates to the purchase, sale or use of diesel fuel to attend before him at the time and place specified in the notice and there to answer questions and produce to him such accounts, books, documents or other records in relation to the purchase, sale or use of diesel fuel as are referred to in the notice.

(5) An authorized officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced in pursuance of subsection (4).

(6) A person is not excused from answering a question or producing any accounts, books, documents or other records when required to do so under subsection (4) on the grounds that the answer to the question, or the production of the accounts, books, documents or other records, might tend to incriminate him or make him liable to a penalty, but his answer to any such question or the production by him of any such accounts, books, documents or other records is not admissible in evidence against him in proceedings other than proceedings for an offence against paragraph (9) (c) or an offence against paragraph 234 (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 subsection (4) and, for that purpose, may administer an oath or affirmation to that person.

(8) The oath or affirmation to be made by a person for the purposes of subsection (7) is an oath or affirmation that the answers he will give to questions asked him will be true.

(9) A person shall not, without reasonable excuse, refuse or fail:

(a) to attend before an authorized officer;

(b) to make an oath or an affirmation; or

(c) to answer a question or produce an account, book, document or other record;

when so required in pursuance of this section.

Penalty: $1,000.

Powers of officers for purposes of *Customs Tariff (Anti-Dumping) Act 1975*

214B. **(1)** For the purposes of the *Customs Tariff (Anti-Dumping) Act 1975* an authorized officer may, at all reasonable times, enter premises where there are kept any accounts, books or other records relating to goods exported to Australia or manufactured or produced, or sold, in Australia and may inspect any such accounts, books, documents or other records and make and retain copies of, or take and retain extracts from, any such accounts, books, documents or other records.

(2) Where an authorized officer proposes to enter any premises under subsection (1), he shall, if requested to do so by the occupier or person in charge of the premises, produce for inspection written evidence of the fact that he is an authorized officer and, if he fails to do so, he is not authorized to enter the premises.

(3) The occupier or person in charge of premises referred to in subsection (1) shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his powers under subsection (1).

Penalty: $1,000.

(4) An authorized officer may, by notice signed by him, require a person whom be believes to be capable of giving information that is relevant to the operation of the *Customs Tariff (Anti-Dumping) Act 1975* and relates to goods exported to Australia or manufactured or produced, or sold, in Australia to attend before him at the time and place specified in the notice and there to answer questions and produce to him such accounts, books, documents or other records in relation to goods exported to Australia or manufactured or produced, or sold, in Australia as are referred to in the notice.

(5) An authorized officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced in pursuance of subsection (4).

(6) A person is not excused from answering a question or producing any accounts, books, documents or other records when required to do so under subsection (4) on the grounds that the answer to the question, or the production of the accounts, books, documents or other records, might tend to incriminate him or make him liable to a penalty, but his answer to any such question or the production by him of any such accounts, books, documents or other records is not admissible in evidence against him in proceedings other than proceedings for an offence against this section or proceedings in respect of the falsity of any such answer.

(7) An authorized officer may examine, on oath or affirmation, a person attending before him in pursuance of subsection (4) and, for that purpose, may administer an oath or affirmation to that person.

(8) The oath or affirmation to be made by a person for the purposes of subsection (7) is an oath or affirmation that the answers he will give to questions asked him will be true.

(9) A person shall not, without reasonable excuse, refuse or fail:

(a) to attend before an authorized officer;

(b) to make an oath or an affirmation; or

(c) to answer a question or produce an account, book, document or other record;

when so required in pursuance of this section.

Penalty: $1,000.

Collector may impound documents

215. The Collector may impound or retain any document presented in connexion with any entry or required to be produced under this Act, but the person otherwise entitled to such document shall in lieu thereof be entitled to a copy certified as correct by the Collector and such certified copy shall be received in all courts as evidence and of equal validity with the original.

Translations of foreign invoices

217. If any document in a foreign language be presented to any officer for any purpose connected with Customs business, the Collector may require to be supplied with an English translation to be made at the expense of the owner by such person as the Collector may approve or to be verified as he may require.

Customs samples

218. Samples of any goods under the control of the Customs may for any purpose deemed necessary by the Collector be taken utilized and disposed of by any officer in manner prescribed.

General power of Collector

219. In all cases not herein otherwise provided for the Collector may exercise any power exercisable by the Customs.

Division 1A—The Use of Listening Devices in relation to Narcotics Offences

Interpretation

219A. (1) In this Division:

"chief officer" , in relation to a Commonwealth law enforcement agency, means:

(a) where the agency is the National Crime Authority—the Chairman of that Authority; and

(b) where the agency is the Australian Federal Police—the Commissioner of Police;

"Commonwealth law enforcement agency" means the National Crime Authority or the Australian Federal Police;

"Judge" means:

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

(b) a Judge of the Supreme Court of a State in respect of whom an appropriate arrangement in force under section 11 is applicable; or

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

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

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

"official" , in relation to a Commonwealth law enforcement agency, means:

(a) where the agency is the National Crime Authority—a member of the Authority or a member of the staff of the Authority; and

(b) where the agency is the Australian Federal Police—a member of the Australian Federal Police or another person under the authority of the Commissioner of Police;

"prescribed offence" means:

(a) a narcotics offence; or

(b) an offence (other than a narcotics offence) against a law of the Commonwealth or of a State or Territory punishable by imprisonment for life or for a period, or maximum period, of not less than 3 years;

"premises" includes:

(a) any structure, building, aircraft or ship, or a vehicle or other carriage; and

(b) any land (whether or not enclosed or built on); and

(c) any part of premises (including premises of a kind referred to in paragraph (a) or (b));

"relevant proceeding" means:

(a) a proceeding by way of prosecution for a prescribed offence;

(b) a proceeding under a law of the Commonwealth, or of a State or Territory, relating to confiscation or forfeiture of property, or the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence;

(c) a proceeding for the taking of evidence in Australia for transmission to a foreign country for use in any proceeding for the surrender of a person to Australia, in so far as that first-mentioned proceeding relates to a prescribed offence; or

(d) a proceeding for the extradition of a person from New Zealand to Australia, or from a State or Territory to another State or Territory in so far as that proceeding relates to a prescribed offence.

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

(a) a reference to narcotics inquiries that are being made by officials of a Commonwealth law enforcement agency shall be read as a reference to:

(i) inquiries that are being made by officials of the agency in relation to a narcotics offence that has been committed or is reasonably suspected of having been committed; or

(ii) if there are circumstances reasonably giving rise to the suspicion that a narcotics offence is likely to be committed—inquiries that are being made by officials of the agency in relation to the likely commission of that offence;

(b) a reference to narcotics inquiries that have been made by officials of a Commonwealth law enforcement agency shall be read as a reference to:

(i) inquiries that have been made by officials of the agency in relation to a narcotics offence that has been committed or was reasonably suspected of having been committed; or

(ii) if there have been circumstances that reasonably gave rise to the suspicion that a narcotics offence was likely to be committed—inquiries that have been made by officials of the agency in relation to the likely commission of that offence;

(c) a reference to a proceeding under a law of the Commonwealth for the confiscation or forfeiture of property, or for the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence includes a reference to;

(i) a proceeding for the condemnation or recovery of a ship or aircraft, or of goods, seized under section 203 in connection with the commission of a narcotics offence;

(ii) a proceeding by way of an application for an order under subsection 243B (1); or

(iii) a proceeding by way of an application for an order or a warrant under the *Proceeds of Crime Act 1987*; and

(d) a reference to a proceeding under a law of a State or Territory for the confiscation or forfeiture of property in connection with the commission of a prescribed offence includes a reference to any proceeding under a law of that State or Territory relating to a restraint of dealing with the proceeds of crime.

Certain Judges eligible to issue warrants for use of listening devices

219AA. (1) A Judge of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory may, by writing, consent to be nominated by the Minister under subsection (2).

(2) The Minister may, by writing, nominate a Judge of a court referred to in subsection (1) in relation to whom a consent is in force under that subsection to be a Judge for the purposes of this Division.

Immunity of Judges

219AB. A Judge has, in relation to the performance of a function or exercise of a power conferred on a Judge by this Division, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

Use of listening devices

219B. (1) It is unlawful for an official of a Commonwealth law enforcement agency to use, for the purposes of narcotics inquiries that are being made by officials of the agency, a listening device for the purpose of listening to or recording words while they are being spoken by a person unless:

(a) he is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard;

(b) not being a person permitted to listen to or record the words under paragraph (a), he does so with the consent, express or implied, of such a person; or

(c) he does so in accordance with a warrant issued to the agency under this Division.

(2) It is unlawful for a person acting by arrangement with an official of a Commonwealth law enforcement agency to use, for the purposes of narcotics inquiries that are being made by officials of the agency, a listening device for the purpose of listening to or recording words while they are being spoken by a person unless he is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard.

(3) It is the duty of the chief officer of each Commonwealth law enforcement agency to take reasonable steps to ensure that subsections (1) and (2) are not contravened by officials of the agency.

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

(a) an official of a Commonwealth law enforcement agency does not act unlawfully by reason only of using a listening device as referred to in subsection (1) in circumstances to which paragraph (a), (b) or (c) of that subsection is applicable; and

(b) a person acting by arrangement with an official of a Commonwealth law enforcement agency does not act unlawfully by reason only of using a listening device as referred to in subsection (2) in circumstances in which the use of that device is not declared to be unlawful by that subsection.

(4A) Application for the issue of a warrant to a Commonwealth law enforcement agency under this section shall be made on the agency's behalf by:

(a) where the agency is the National Crime Authority—a member of the Authority or a member of a police force who is a member of the staff of the Authority; and

(b) where the agency is the Australian Federal Police—a member of the Australian Federal Police.

(5) Where, upon application being made to a Judge for the issue of a warrant to a Commonwealth law enforcement agency under this section authorizing the use of a listening device in relation to a particular person, the Judge is satisfied, by information on oath, that:

(a) the person has committed, or is suspected on reasonable grounds of having committed, or of being likely to commit, a narcotics offence; and

(b) the use by officials of the agency of a listening device to listen to or record words spoken by or to that person will, or is likely to, assist officials of the agency in or in connection with:

(i) inquiries that are being made in relation to a narcotics offence that the person has committed or is reasonably suspected of having committed; or

(ii) if there are circumstances reasonably giving rise to the suspicion that the person is likely to commit a narcotics offence—inquiries that are being made in relation to the likely commission, by that person, of that offence;

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

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

(7) Where, upon application being made to a Judge for the issue of a warrant to a Commonwealth law enforcement agency under this section authorizing the use of a listening device in relation to particular premises, the Judge is satisfied, by information on oath, that:

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

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

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

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

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

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

(12) Nothing in this section, or in a warrant under this section, applies to or in relation to the use of a listening device for a purpose that would, for the purposes of the *Telecommunications (Interception) Act 1979*, constitute the interception (whether or not in contravention of subsection 7 (1) of that Act) of a communication passing over a telecommunications system within the meaning of that Act.

Information to be given in support of application for warrant

219C. Information furnished to a Judge for the purposes of subsection 219B (5) or (7):

(a) may be given orally or otherwise; and

(b) shall include the facts and other grounds on which the applicant considers it necessary that the warrant should be issued.

Exercise of powers under warrant

219D. (1) The authority conferred by a warrant issued to a Commonwealth law enforcement agency under section 219B shall be exercised only by the chief officer of the agency or by other officials of the agency approved, for the purposes of that warrant or of warrants issued under that section, by the chief officer or by an authorised official of the agency.

(2) In subsection (1), a reference to an authorised official of a Commonwealth law enforcement agency is a reference to an official of the agency appointed by the chief officer of the agency, by writing, to be an authorised official of the agency for the purposes of this section.

Discontinuance of action before expiration of warrant

219E. Where, before a warrant granted to a Commonwealth law enforcement agency under this Division ceases to be in force, the chief officer of that agency is satisfied that the grounds on which the warrant was issued have ceased to exist, he or she shall:

(a) forthwith take such steps as are necessary to ensure that action in pursuance of the warrant (other than the recovery of a listening device or a part of a listening device) is discontinued; and

(b) by instrument signed by him or her, revoke the warrant.

Certain information not to be disclosed

219F. (1) A person shall not divulge or communicate to another person, or make use of or record, any information obtained by using a listening device for the purposes of narcotics inquiries that are being, or have been, made by officials of a Commonwealth law enforcement agency, being information that has come to his knowledge or into his possession by reason of his being, or having been, an official of the agency or by reason of his having entered into an arrangement with an official of the agency to use a listening device for the purpose of those inquiries, except for the purposes of those inquiries.

Penalty: Imprisonment for 3 years.

(2) Notwithstanding subsection (1), the chief officer of a Commonwealth law enforcement agency may, in accordance with the following paragraphs, personally or by another official of the agency authorised by the chief officer, communicate information obtained by using a listening device for the purposes of narcotics inquiries that are being, or have been, made by officials of the agency:

(a) where the information relates, or appears to relate, to the commission, or intended commission, of a prescribed offence—the information may be communicated, for the purpose of the investigation of the offence, to:

(i) an official of that agency; or

(ii) an official of the other Commonwealth law enforcement agency; or

(iii) an officer of the Police Force of a State or Territory; and

(b) where the information relates, or appears to relate, to activities that constitute, or to intended activities that would constitute, activities prejudicial to security, within the meaning of the *Australian Security Intelligence Organization Act 1979*—the information may be communicated to the person holding, or performing the duties of, the office of Director-General of Security under that Act.

(3) Without limiting the purposes for which a person may, in accordance with subsection (1), divulge information, a person may divulge or communicate information obtained by using a listening device for the purpose of narcotics inquiries that are being, or have been, made by officials of a Commonwealth law enforcement agency, for a purpose connected with:

(a) the making by an authority, body or person of a decision whether or not to begin a relevant proceeding; or

(b) the conduct of a relevant proceeding.

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

Certain records to be destroyed

219G. Where, by virtue of a warrant issued to a Commonwealth law enforcement agency under this Division, any record or copy has been made and the chief officer of the agency is satisfied:

(a) that the record or copy will not assist, and is not likely to assist, officials of the agency in, or in connection with narcotics inquiries that are being, or have been, made by them; and

(b) that the record or copy is not required, and is not likely to be required:

  (i) in, or in connection with, a relevant proceeding; or

  (ii) in, or in connection with, the exercise by officials of the agency of the powers conferred on the chief officer of the agency by subsection 219F (2);

the chief officer of the agency shall cause the record or copy to be destroyed.

Warrants etc. to be retained

219H. The chief officer of a Commonwealth law enforcement agency shall cause to be retained in the records of the agency all warrants issued to the agency under section 219B, all documents furnished to a Judge in connection with the issue of those warrants, and all instruments issued under section 219E revoking warrants so issued.

Reports to be made to Minister concerning use of listening devices

219K. (1) The chief officer of a Commonwealth law enforcement agency shall furnish to the Minister a copy of each warrant issued to the agency, under section 219B, a copy of all documents furnished to a Judge in connection with the issue of the warrant and each instrument issued under section 219E revoking the warrant as soon as practicable after the issue or revocation of a warrant.

(2) The chief officer of a Commonwealth law enforcement agency shall give the Minister, in respect of each warrant issued to the agency under section 219B, a report in writing with respect to the use, whether the use was for the purposes of narcotics inquiries or otherwise, made by officials of the agency of information obtained by using a listening device under the warrant and the communication of any information so obtained to persons other than officials of the agency.

Division 2—Protection to Officers

Reasonable cause for seizure a bar to action

220. No person shall be liable for any seizure under this Act for which there shall have been reasonable cause, and when any claimant recovers any ship aircraft or goods seized or any proceeds thereof and at the same time reasonable cause for the seizure is found such finding shall bar all proceedings against all persons concerned in the seizing.

Notice of action to be given

221. No proceedings shall be commenced against any officer for anything done in execution of or by reason of his office until one month next after notice in writing shall have been delivered to him or left at his usual place of abode by the plaintiff his attorney or agent in which notice shall be clearly stated the cause and nature of the proceeding and the court in which the same is intended to be instituted, the name and place of abode of the plaintiff and the name and place of business of such attorney or agent unless the Supreme Court of a State, the Supreme Court of the Australian Capital Territory or the Supreme Court of the Northern Territory of Australia has granted leave to the plaintiff to proceed without notice, which leave the Court may grant on such terms as it thinks just.

Defect in notice not to invalidate

222. No notice under the last preceding section shall be deemed invalid by reason of any defect or inaccuracy therein unless the Court is of opinion that the defect or inaccuracy would prejudice the defendant in his defence and the Court may give leave to amend such notice as it thinks just.

No evidence to be produced but that contained in notice

223. Upon any proceeding instituted in pursuance of such notice the plantiff shall not be at liberty to advance any evidence of any cause of action except such as has been distinctly stated in such notice nor shall the plaintiff be entitled to a verdict without proving on the trial that such notice has been duly served.

Officer may tender amends

224. It shall be lawful for any officer to whom notice of proceeding shall have been given at any time within one month after such notice to tender amends to the plaintiff his attorney or agent and in case such amends be not accepted to plead such tender in defence either alone or with other defences and if the amends tendered shall be found to have been sufficient no costs shall be recovered against an officer and he shall be entitled to costs if he shall have brought the amount into court when entering his defence.

Commencement of proceedings against officers

225. Every proceeding against any officer shall except as mentioned in the next section be commenced within 6 months after its cause shall have arisen and not afterwards and the venue shall be local and the defendant may plead the general issue and give any special matter in evidence.

Time for commencing action

226. **(1)** No proceeding whether against an officer or otherwise for anything done for the protection of the revenue in relation to any Customs Tariff or Customs Tariff alteration proposed in the Parliament shall except as mentioned in the next section be commenced before the close of the session in which such Tariff or Tariff alteration is proposed or before the expiration of 12 months after such Tariff or Tariff alteration is proposed, whichever first happens.

(2) No proceeding, whether against an officer or otherwise, for anything done for the protection of the revenue in relation to a Customs Tariff or Customs Tariff alteration that is intended to be proposed in accordance with a notice under section 273EA shall, except as provided in the next succeeding section, be commenced before:

(a) the seventh sitting day of the House of Representatives after the date of publication of the notice, or the day on which the period of 6 months from the date of publication of the notice expires, whichever is the earlier day; or

(b) where, on or before the earlier of the days referred to in the last preceding paragraph, a Customs Tariff or Customs Tariff alteration that would validate the thing so done is proposed in the Parliament—the close of the session in which the Customs Tariff or Customs Tariff alteration is so proposed, or the expiration of 12 months after the Customs Tariff or Customs Tariff alteration is so proposed, whichever first happens.

Security may be required

227. The Supreme Court of a State, the Supreme Court of the Australian Capital Territory or the Supreme Court of the Northern Territory of Australia on the application of any person who desires to commence any proceeding mentioned in the last section against an officer may require the officer to give security to the satisfaction of the Court to abide the result of the proceeding and in default of the giving of such security may sanction the immediate commencement of the proceeding.

PART XIII—PENAL PROVISIONS

Division 1—Forfeitures

Forfeited ships and aircraft

228. (1) The following ships or boats not exceeding 80 metres in overall length and the following aircraft shall be forfeited to the Crown:

(1) Any ship or aircraft used in smuggling, or knowingly used in the unlawful importation, exportation, or conveyance of any prohibited imports or prohibited exports.

(2) Any ship the master of which has refused to permit his ship to be boarded following a request properly made of him under subsection 59 (1) or (2).

(3) Any aircraft failing to land at an airport for boarding upon its pilot being properly requested under section 59 to land the aircraft.

(4) Any ship or aircraft from which goods are thrown overboard staved or destroyed to prevent seizure by the Customs.

(5) Any ship or aircraft found within any port or airport with cargo on board and afterwards found light or in ballast or with the cargo deficient and the master or pilot of which is unable to lawfully account for the difference.

(6) Any ship or aircraft which on being boarded in pursuance of section 59, 185 or 187 is found to be constructed, adapted, altered or fitted in any manner for the purpose of concealing goods.

The owner of a ship exceeding 80 metres in overall length which would be forfeited if the ship were less than 80 metres in overall length shall be liable to a penalty not exceeding $100,000, and the ship may be detained until the penalty is paid or until security is given for its payment.

(2) For the purposes of this section, the overall length of a ship shall be ascertained by measuring the distance between:

(a) a vertical line passing through a point, being the foremost part of the stem; and

(b) a vertical line passing through a point, being the aftermost part of the stern.

Forfeited resources installations

228A. Any overseas resources installation that becomes attached to the Australian seabed without the permission of the Comptroller given under subsection 5A (2) shall be forfeited to the Crown.

Forfeited sea installations

228B. Any overseas sea installation that becomes installed in a coastal area without the permission of the Comptroller given under subsection 5B (2) shall be forfeited to the Crown.

Forfeited goods

229. **(1)** The following goods shall be forfeited to the Crown:

(a) All goods (not being objects forfeited, or liable to forfeiture, under the *Protection of Movable Cultural Heritage Act 1986*) which are smuggled, or unlawfully imported, exported, or conveyed.

(b) All prohibited imports.

(ba) All goods the importation of which has been prohibited unless a licence or permission containing conditions or requirements has been granted and those conditions or requirements have not been complied with.

(bb) Any goods sold under section 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.

(j) Any carriage or animal used in smuggling or in the unlawful importation, exportation, or conveyance of any goods.

(m) All goods not being passengers' baggage found on any ship or aircraft after clearance and not specified or referred to in the Outward Manifest and not accounted for to the satisfaction of the Collector.

(n) All prohibited exports put on any ship boat or aircraft for export or brought to any wharf or place for the purpose of export.

(o) All dutiable goods concealed in any manner.

(p) Any package having concealed therein goods not enumerated in the entry or being so packed as to deceive the officer.

(q) All dutiable goods found in the possession or in the baggage of any person who has got out of, landed from or gone on board any ship boat or aircraft and who has denied that he has any dutiable goods in his possession, or who when questioned by an officer has not fully disclosed that such goods are in his possession or baggage.

(r) All goods offered for sale on the pretence that the same are prohibited or smuggled goods.

(1A) In spite of subsection (1), goods are not forfeited to the Crown merely because they are imported or exported in contravention of the *Motor Vehicle Standards Act 1989*.

(2) Notwithstanding section 228, this section applies in relation to ships, boats and aircraft as well as other goods.

(3) In spite of subsection (1), goods are not forfeited to the Crown merely because they are imported or exported in contravention of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

Proceeds of drug trafficking liable to forfeiture

229A. (1) In this section, unless the contrary intention appears:

"cheque" includes a bill, promissory note or other security for money;

"goods" includes cheques, but does not include moneys in the form of cash;

"moneys" means moneys in the form of cash.

(2) This section applies to:

(a) moneys or goods in the possession or under the control of a person, being moneys or goods that came into his possession or under his control by reason of:

(i) his selling or otherwise dealing in, or his agreeing to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act;

(ii) his importing, or his agreeing to import, narcotic goods into Australia in contravention of this Act;

(iii) his exporting, or his agreeing to export, narcotic goods from Australia in contravention of this Act;

(iv) his keeping or having kept, or his agreeing to keep, in his possession narcotic goods imported into Australia in contravention of this Act;

(v) his conspiring with another person or other persons to import any narcotic goods into Australia in contravention of this Act or to export any narcotic goods from Australia in contravention of this Act; or

(vi) his aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the sale of, or other dealing in, narcotic goods imported into Australia in contravention of this Act, the importation of narcotic goods into Australia in contravention of this Act, the exportation of narcotic goods from Australia in contravention of this Act or the keeping in the possession of any person of narcotic goods imported into Australia in contravention of this Act;

(b) moneys in the possession or under the control of a person that were paid to him for the sale of goods that were, immediately before the sale, goods to which this section applied; and

(c) goods in the possession or under the control of a person that were purchased or otherwise acquired by him with or out of moneys to which this section applied.

(3) Where a person who obtained possession or control of a cheque, or was paid moneys by a cheque, in any of the circumstances set out in paragraph (2) (a) or (b) receives, in respect of the cheque, moneys in the form of cash, the moneys so received shall, for the purposes of subsection (2), be deemed to be moneys that came into his possession or under his control, or were paid to him, in the circumstances in which he obtained possession or control of the cheque, or was paid the moneys by the cheque.

(4) Where a person who purchases or otherwise acquires goods pays the whole or substantially the whole of the amount paid by him for the goods by means of a cheque that came into his possession or under his control as set out in paragraph (2) (a), the goods shall, for the purposes of subsection (2), be deemed to have come into his possession or under his control in the circumstances in which the cheque came into his possession or under his control.

(5) For the purposes of paragraph (2) (c), goods shall not be taken to have been purchased with or out of moneys to which this section applied unless the whole, or substantially the whole, of the moneys paid for the goods were moneys to which this section applied.

(6) For the purposes of section 203, moneys or goods to which this section applies shall be deemed to be forfeited goods and, upon moneys or goods to which this section applies being seized in pursuance of section 203, they shall, for the purposes of sections 204 to 208E (inclusive) and Part XIV, be deemed to be forfeited goods, and those provisions apply accordingly.

(7) Where, in any proceedings for the condemnation or recovery of moneys or goods to which this section applies and which have been seized under section 203, the Court is satisfied that the relevant narcotic goods are goods reasonably suspected of having been imported into Australia in contravention of this Act, the Court shall, for the purposes of the proceedings, treat the narcotic goods as narcotic goods which have been imported into Australia in contravention of this Act unless it is established to the satisfaction of the Court that the narcotic goods were not imported into Australia or were not imported into Australia in contravention of this Act.

(8) Without limiting any powers that are conferred on a Court by the provisions of this Act specified in subsection (6) and notwithstanding any other provision of this Act:

(a) where moneys or goods in the possession or under the control of a person are seized under section 203, a Court in which proceedings are brought for the condemnation or recovery of the moneys or goods shall, if it is satisfied that the moneys or goods were, at the time when they were so seized, owned by another person who, when he became the owner of the moneys or goods, did not know, and had no reason to suspect, that the moneys or goods had come into the possession or under the control of the first-mentioned person in circumstances referred to in subsection (2), direct that the moneys or goods be delivered to that other person; and

(b) where moneys or goods in the possession or under the control of the licensee of a warehouse are seized under section 203, a Court in which proceedings are brought for the condemnation or recovery of the moneys or goods shall direct that the moneys or goods be delivered to the licensee if it is satisfied that:

 (i) the moneys came into the possession or under the control of the licensee by reason of his storing in the warehouse narcotic goods imported into Australia in contravention of this Act or by reason of his selling goods that were acquired by him with or out of any such moneys; or

(ii) the goods were purchased or otherwise acquired by him out of moneys that so came into his possession or under his control;

as the case may be, and is also satisfied that the licensee did not know that the goods stored in the warehouse were narcotic goods or that they had been imported into Australia in contravention of this Act.

Forfeited packages and goods

230. The forfeiture of any goods shall extend to the forfeiture of the packages in which the goods are contained and the forfeiture of any package under section 229 shall extend to all goods packed or contained in the package.

Division 2—Penalties

Assembly for unlawful purposes

231. **(1)** All persons to the number of 2 or more assembled for the purpose of:

(a) importing prohibited imports; or
(b) smuggling; or
(c) preventing the seizure, or rescuing after seizure, of any prohibited imports or smuggled goods;

shall be guilty of an offence punishable upon conviction:

(d) if the offence is committed in relation to goods that are not narcotic goods—by imprisonment for a period not exceeding 2 years; or
(e) if the offence is committed in relation to goods that are narcotic goods—as provided by section 235.

(2) This section, in so far as it relates to prohibited imports, shall apply to all prohibited imports that are narcotic goods.

(3) An offence against this section to which paragraph (1) (d) applies is punishable upon summary conviction.

Collusive seizures—penalty

232. Whoever:

(a) being an officer of the Customs or Police makes any collusive seizure or delivers up or makes any agreement to deliver up or not to seize any ship boat carriage or goods liable to forfeiture or conspires or connives with any person to import or export, or is in any way concerned in the importation or exportation of any goods for the purpose of seizing any ship boat carriage or goods and obtaining any reward for such seizure;

Bribe offered to officer—penalty

(b) gives, or procures to be given, or offers or promises to give or procure to be given any bribe recompense or reward to, or makes any collusive agreement with any officer to induce him in any way to neglect his duty, or who by threats demands or promises attempts to influence any officer in the discharge of his duty;

shall be guilty of an indictable offence and shall be liable to imprisonment with or without hard labour for any term not exceeding 5 years.

Rescuing goods and assaulting officers

232A. Whoever:

(a) rescues any goods which have been seized, or, before or at or after seizure, staves, breaks or destroys any goods or documents relating thereto to prevent the seizure thereof or the securing of the same or the proof of any offence; or

(b) assaults, resists, molests, obstructs or endeavours to intimidate any officer, or any person assisting an officer, in the execution of his duty;

shall be guilty of an offence and shall be liable, upon summary conviction, to a fine not exceeding $500 or to imprisonment for any period not exceeding 2 years.

Smuggling and unlawful importation and exportation

233. (1) A person shall not:

(a) smuggle any goods; or

(b) import any prohibited imports; or

(c) export any prohibited exports; or

(d) unlawfully convey or have in his possession any smuggled goods or prohibited imports or prohibited exports.

(1AA) A person who contravenes subsection (1) is guilty of an offence punishable upon conviction:

(a) in the case of an offence against paragraph (1) (a) or an offence against paragraph (1) (d) in relation to smuggled goods—as provided by subsection 233AB (1); or

(b) in any other case—as provided by subsection 233AB (2).

(2) It shall not be lawful for any person to convey or have in his possession without reasonable excuse (proof whereof shall lie upon him) any smuggled goods or prohibited imports.

(3) It shall not be lawful for any person to convey or have in his possession any prohibited exports with intent to export them or knowing that they are intended to be unlawfully exported.

(4) Merchandise on board a ship or aircraft calling at any port or airport in Australia, but intended for and consigned to some port or airport or place outside Australia, shall not be deemed to be unlawfully imported into Australia if the goods are specified on the ship's or aircraft's manifest and are not transhipped or landed in Australia or are transhipped or landed by authority.

(5) This section does not apply to, or in relation to, narcotic goods.

Master not to use or allow use of ship for smuggling

233A. (1) The master of a ship or the pilot of an aircraft shall not use his ship or aircraft, or knowingly suffer her to be used, in smuggling, or in the importation of any goods in contravention of this Act, or in the exportation or conveyance of any goods in contravention of this Act.

(2) A person who contravenes subsection (1) is guilty of an offence punishable upon conviction:

(a) in the case of an offence committed in relation to goods that are narcotic goods—as provided by section 235;

(b) in the case of an offence committed in relation to the smuggling of goods that are not narcotic goods—as provided by subsection 233AB (1); or

(c) in any other case—as provided by subsection 233AB (2).

Penalties for offences against sections 233 and 233A

233AB. (1) Where an offence is punishable as provided by this subsection, the penalty applicable to the offence is:

(a) where the Court can determine the amount of the duty that would have been payable on the smuggled goods to which the offence relates if those goods had been entered for home consumption on:

  (i) where the date on which the offence was committed is known to the Court—that date; or

  (ii) where that date is not known to the Court—the date on which the prosecution for the offence was instituted;

a penalty not exceeding 5 times the amount of that duty and not less than 2 times that amount; or

(b) where the Court cannot determine the amount of that duty, a penalty not exceeding $50,000.

(2) Where an offence is punishable as provided by this subsection, the penalty applicable to the offence is:

(a) where the Court can determine the value of the goods to which the offence relates, a penalty not exceeding:

(i) 3 times the value of those goods; or

(ii) $50,000;

whichever is the greater; or

(b) where the Court cannot determine the value of those goods—a penalty not exceeding $50,000.

Special provisions with respect to narcotic goods

233B. (1) Any person who:

(a) without any reasonable excuse (proof whereof shall lie upon him) has in his possession, on board any ship or aircraft, any prohibited imports to which this section applies; or

(aa) without reasonable excuse (proof whereof shall lie upon the person) brings, attempts to bring, or causes to be brought, into Australia any prohibited imports to which this section applies;

(b) imports, or attempts to import, into Australia any prohibited imports to which this section applies or exports, or attempts to export, from Australia any prohibited exports to which this section applies; or

(c) without reasonable excuse (proof whereof shall lie upon him) has in his possession, or attempts to obtain possession of, any prohibited imports to which this section applies which have been imported into Australia in contravention of this Act; or

(ca) without reasonable excuse (proof whereof shall lie upon him) has in his possession, or attempts to obtain possession of, any prohibited imports to which this section applies which are reasonably suspected of having been imported into Australia in contravention of this Act; or

(cb) conspires with another person or other persons to import, bring, or cause to be brought, into Australia any prohibited imports to which this section applies or to export from Australia any prohibited exports to which this section applies; or

(d) aids, abets, counsels, or procures, or is in any way knowingly concerned in, the importation, or bringing, into Australia of any prohibited imports to which this section applies, or the exportation from Australia of any prohibited exports to which this section applies; or

(e) fails to disclose to an officer on demand any knowledge in his possession or power concerning the importation or intended importation, or bringing or intended bringing, into Australia of any prohibited imports to which this section applies or the exportation or intended exportation from Australia of any prohibited exports to which this section applies;

shall be guilty of an offence.

(1A) On the prosecution of a person for an offence against the last preceding subsection, being an offence to which paragraph (c) of that subsection applies, it is not necessary for the prosecution to prove that the person knew that the goods in his possession or of which he attempted to obtain possession had been imported into Australia in contravention of this Act, but it is a defence if the person proves that he did not know that the goods in his possession or of which he attempted to obtain possession had been imported into Australia in contravention of this Act.

(1B) On the prosecution of a person for an offence against subsection (1), being an offence to which paragraph (ca) of that subsection applies, it is a defence if the person proves that the goods were not imported into Australia or were not imported into Australia in contravention of this Act.

(1C) Any defence for which provision is made under either of the last 2 preceding subsections in relation to an offence does not limit any defence otherwise available to the person charged.

(2) The prohibited imports to which this section applies are prohibited imports that are narcotic goods and the prohibited exports to which this section applies are prohibited exports that are narcotic goods.

(3) A person who is guilty of an offence against subsection (1) of this section is punishable upon conviction as provided by section 235.

(4) This section shall not prevent any person from being proceeded against for an offence against any other section of this Act, but he shall not be liable to be punished twice in respect of any one offence.

Evidence of analyst

233BA. **(1)** The Comptroller may appoint a person to be an analyst for the purposes of this Act.

(2) Subject to subsection (4), a certificate of an analyst stating that he or she has analysed or examined a substance, setting out the date on which the analysis or examination was carried out, describing the method employed in conducting the analysis or examination, and stating the result of the analysis or examination, is admissible in any proceeding under section 233B as *prima facie* evidence of the matters in the certificate and of the correctness of the result of the analysis or examination.

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(4) A certificate shall not be admitted in evidence under subsection (2) in proceedings for an offence unless the person charged with the offence or a solicitor who has appeared for the person in those proceedings has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

(5) Subject to subsection (6), where, under subsection (2), a certificate of an analyst is admitted in evidence in a proceeding for an offence, the person charged with the offence may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he or she had given evidence of the matters stated in the certificate.

(6) Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless:

(a) the prosecutor has been given at least 4 days notice of the person's intention to require the analyst to be so called; or

(b) the Court, by order, allows the person to require the analyst to be so called.

Customs offences

234. **(1)** A person shall not:

(a) Evade payment of any duty which is payable;

(b) Obtain any drawback, refund, rebate or remission which is not payable;

(d) knowingly or recklessly:

(i) make a statement to an officer that is false or misleading in a material particular; or

(ii) omit from a statement made to an officer any matter or thing without which the statement is misleading in a material particular;

(g) Refuse or fail to answer questions or to produce documents;

(h) Sell or offer for sale, any goods upon the pretence that such goods are prohibited imports or smuggled goods.

(2) A person who contravenes subsection (1) is guilty of an offence punishable upon conviction:

(a) in the case of an offence against paragraph (1) (a), by:

(i) where the Court can determine the amount of the duty on goods the payment of which would have been evaded by the commission of the offence if the goods had been entered for home consumption on:

(A) where the date on which the offence was committed is known to the Court—that date; or

(B) where that date is not known to the Court—the date on which prosecution for the offence was instituted;

a penalty not exceeding 5 times the amount of that duty and not less than 2 times that amount; or

(ii) where the Court cannot determine the amount of that duty, a penalty not exceeding $50,000;

(b) in the case of an offence against paragraph (1) (b), by a penalty not exceeding 5 times the amount of drawback, refund, rebate or remission that was obtained by the commission of the offence and not less than 2 times that amount;

(c) subject to subsection (3), in the case of an offence against paragraph (1) (d), by a penalty not exceeding $5,000; or

(d) in the case of an offence against paragraph (1) (g) or (h), by a penalty not exceeding $1,000.

(3) Where a person is convicted of an offence against paragraph (1) (d) in relation to a statement made, or an omission from a statement made, in respect of the amount of duty payable on particular goods, a Court may, in relation to that offence, impose a penalty not exceeding the sum of $5,000 and twice the amount of the duty payable on those goods.

Places set aside for purposes of Act

234AA. (1) Where a place is to be used by officers:

(a) for questioning, for the purposes of this Act or of any other law of the Commonwealth, passengers disembarking from or embarking on a ship or aircraft;

(b) for examining, for such purposes, the personal baggage of such passengers; or

(c) as a holding place for such passengers;

a Collector, or a person authorized by a Collector to do so, may cause signs to be displayed at or near the place that identify the place and state that entry into it by unauthorized persons is prohibited by this Act.

(2) Where a sign is displayed in relation to a place under subsection (1), a Collector, or a person authorized by a Collector to do so, may cause signs to be displayed at or near the place that identify the place and state that the use of cameras or sound recorders at the place by unauthorized persons is prohibited by this Act.

Unauthorised entry to places and on ships, aircraft or wharves

234A. (1) A person, other than a passenger disembarking from, or embarking on, a ship or aircraft, shall not, except by authority:

(a) enter into, or be in, a place in relation to which a sign is displayed under subsection 234AA (1); or

(b) enter on or be in or on:

(i) a ship;

(ii) an aircraft;

(iii) the wharf at which, or the part of a wharf adjacent to which, a ship is berthed;

at a time when goods being the personal baggage of passengers disembarking from, or embarking on that ship or aircraft are being examined, for the purposes of this Act, at or in the vicinity of the ship, aircraft, wharf or part of a wharf.

Penalty: $1,000.

(2) The last preceding subsection does not prohibit a person:

(a) who has, or is a member of an authority which has, the management or control of a wharf or wharves or an airport or airports; or

(b) who is employed in connexion with the management or control of a wharf or wharves or an airport or airports;

from entering on, or being in or on, a place, ship, aircraft, wharf or part of a wharf for the purposes of that management or control.

(3) In any proceedings for the prosecution of a person for an offence against subsection (1), evidence that a sign stating that entry into a place is prohibited by this Act was displayed at or near that place is *prima facie* evidence that the sign was so displayed in accordance with subsection 234AA (1).

Unauthorised use of cameras and sound recorders

234AB. (1) An officer may direct a person, including a passenger disembarking from, or embarking on, a ship or aircraft:

(a) not to operate a camera, or use an appliance to record or transmit sound, at a place in relation to which a sign is displayed under subsection 234AA (2); or

(b) not to operate a camera, or use an appliance to record or transmit sound, at a place (being a place that is part of a ship, of an aircraft or of a wharf) at a time when the personal baggage of passengers disembarking from, or embarking on, a ship or aircraft, is being examined, for the purposes of this Act, at or in the vicinity of that place.

(2) Where an officer gives to a person a direction under subsection (1), the officer shall inform that person that failure to comply with that direction is an offence under this Act.

(3) A person shall not, without reasonable excuse, fail to comply with a direction given to that person by an officer in accordance with subsection (1).

Penalty: $1,000.

(4) In any proceedings for the prosecution of a person for an offence against subsection (3), evidence that a sign stating that the use of a camera or a sound recorder at a place is prohibited by this Act was displayed at or near that place is *prima facie* evidence that the sign was so displayed in accordance with subsection 234AA (2).

(5) In this section, **"camera"** includes any device for making or transmitting, or designed for use in the making or transmission of, images of objects.

(6) For the purposes of this section, a person shall be taken to use an appliance to transmit sound at a place if, and only if, the person uses the appliance to transmit sound, other than sound coming from the appliance, from the place to another place.

Penalties for offences in relation to narcotic goods

235. (1) Where:

(a) a person commits an offence against subsection 50 (4) or subsection 112 (2B); and

(b) the offence is an offence that is punishable as provided by this section;

the penalty applicable to the offence is a fine not exceeding $2,000 or imprisonment for a period not exceeding 2 years, or both.

(2) Subject to subsections (3) and (7), where:

(a) a person commits an offence against subsection 231 (1), section 233A or subsection 233B (1); and

(b) the offence is an offence that is punishable as provided by this section;

the penalty applicable to the offence is:

(c) where the Court is satisfied:

(i) that the narcotic goods in relation to which the offence was committed 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 trafficable quantity applicable to that substance and also that, on a previous occasion, a court has:

(A) convicted the person of another offence, being an offence against a provision referred to in paragraph (a) that involved other narcotic goods which consisted of a quantity of a narcotic substance not less than the trafficable quantity that was applicable to that substance when the offence was committed; or

(B) found, without recording a conviction, that the person had committed another such offence:

imprisonment for life or for such period as the Court thinks appropriate;

(d) where the Court is satisfied that the narcotic goods in relation to which the offence was committed consist of a quantity of a narcotic substance that is not less than the trafficable quantity applicable to the substance but is not satisfied as provided in paragraph (c):

(i) if the narcotic substance is a narcotic substance other than cannabis—a fine not exceeding $100,000 or imprisonment for a period not exceeding 25 years, or both; or

(ii) if the narcotic substance is cannabis—a fine not exceeding $4,000 or imprisonment for a period not exceeding 10 years, or both; or

(e) in any other case—a fine not exceeding $2,000 or imprisonment for a period not exceeding 2 years, or both.

(3) Where:

(a) the Court is satisfied that the narcotic goods in relation to which an offence referred to in subsection (2) was committed consist of a quantity of a narcotic substance that is not less than the trafficable quantity applicable to that substance, but is not satisfied as provided in paragraph (c) of that subsection in relation to those narcotic goods; and

(b) the Court is also satisfied that the offence was not committed by the person charged for any purposes related to the sale of, or other commercial dealing in, those narcotic goods;

notwithstanding paragraph (d) of that subsection, the penalty punishable for the offence is the penalty specified in paragraph (e) of that subsection.

(4) An offence referred to in subsection (1) or (2) may be prosecuted summarily or upon indictment or, where the law of the State or Territory in which the proceedings are brought makes provision for an offender who pleads guilty to a charge to be dealt with by the Court otherwise than on indictment, the court may deal with an offender in accordance with that law.

(5) Nothing in subsection (4) renders an offender liable to be punished more than once for the same offence.

(6) Where proceedings for an offence referred to in subsection (1) or (2) are brought in a court of summary jurisdiction, the court may commit the defendant for trial or to be otherwise dealt with in accordance with law or, if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent to it doing so, may determine the proceedings summarily.

(7) Where a court of summary jurisdiction determines proceedings summarily in accordance with subsection (6), it shall not impose a fine exceeding $2,000 or sentence the defendant to imprisonment for a period exceeding 2 years, but may impose both a fine and a period of imprisonment in respect of the offence.

(8) For the purposes of subsections (2) and (3), the narcotic substance of which narcotic goods in relation to which an offence has been committed consist is the narcotic substance that is specified in the relevant information, complaint, declaration, claim or indictment as the narcotic substance of which those goods consist.

Aiders and abettors

236. Whoever aids abets counsels or procures or by act or omission is in any way directly or indirectly concerned in the commission of any offence against this Act shall be deemed to have committed such offence and shall be punishable accordingly.

Attempts

237. Any attempt to commit an offence against this Act shall be an offence against this Act punishable as if the offence had been committed.

Penalties in addition to forfeitures

239. All penalties shall be in addition to any forfeiture.

Commercial documents to be kept

240. (1) A person who imports goods into Australia shall keep all the relevant commercial documents relating to the goods that came into that person's possession or control before, or come into that person's possession or control on or after, the entry of those goods for any purpose, being documents that are necessary to enable a Collector to ascertain whether the goods are properly described and, in the case of goods that are entered for home consumption, properly valued or rated for duty until:

(a) if the goods are not ultimately entered for home consumption—the goods cease to be subject to the control of Customs; and

(b) if the goods are entered, or ultimately entered, for home consumption—the expiration of the period of 5 years after the goods are so entered.

Penalty: $2,000.

(2) Where, in accordance with the requirement of any law of the Commonwealth or of a State or Territory or with ordinary commercial practice a document that would, but for this subsection, be required to be kept in accordance with subsection (1), is required by that law or practice to be surrendered to another person, this section shall be taken to be complied with if, at all times after the document is so surrendered and during the period that the document would have been required to be kept, a true copy of the document, certified in accordance with subsection (3), is kept in its stead.

(3) Where a person is required to surrender a commercial document referred to in subsection (1) to another person for a reason set out in subsection (2), the first-mentioned person may make a true copy of the document and, if the first-mentioned person does so, and attaches to the copy a certificate, signed by the first-mentioned person:

(a) to the effect:

(i) that the copy is a true copy of the original document; and

(ii) that the original document has been surrendered to that other person for that reason; and

(b) providing particulars of the reason referred to in subparagraph (a) (ii);

the certified copy shall be treated by the Comptroller or a Collector, and shall be admissible in all courts, as if it were the original document.

(4) A person who is required by subsection (1) to keep commercial documents relating to particular goods:

(a) shall keep the documents in such a manner as will enable a Collector readily to ascertain whether the goods have been properly described, and, in the case of goods entered for home consumption, properly valued or rated for duty;

(b) shall, on request, in writing, by a Collector, inform the Collector as to the whereabouts of the documents; and

(c) subject to subsection (5), shall not alter or deface any commercial document required to be so kept.

Penalty: $2,000.

(5) Nothing in paragraph (4) (c) shall be taken to prohibit the notation or marking of a document in accordance with ordinary commercial practice.

(6) Where:

(a) a person is convicted of an offence against subsection (1) or (4); and

(b) the court before which the person is convicted is satisfied that the person has previously been convicted of a records offence;

the penalty that the court may impose in respect of the first-mentioned offence is a fine not exceeding $5,000.

(7) This section shall not require the keeping of any commercial documents:

(a) by a company that has gone into liquidation and that has been dissolved;

(b) by a class of persons that is declared by the regulations to be a class to which this section does not apply; or

(c) of a kind declared by the regulations to be commercial documents to which this section does not apply.

Division 3—Recovery of Pecuniary Penalties for Dealings in Narcotic Goods

Interpretation

243A. (1) In this Division, unless the contrary intention appears:

"benefit" includes service or advantage;

"cheque" includes a bill, promissory note or other security for money;

"Court" means the Federal Court of Australia;

"dealing" , in relation to property of a person, includes:

(a) if a debt is owed to that person—making a payment to any person in reduction of the amount of the debt;

(b) removing the property from Australia; and

(c) receiving or making a gift of the property;

"effective control" , in relation to property, or an interest in property, has the meaning given by section 243AB;

"interest" , in relation to property, means:

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property;

whether present or future and whether vested or contingent;

"moneys" means moneys in the form of cash;

"Official Trustee" means the Official Trustee in Bankruptcy;

"pecuniary penalty" means a pecuniary penalty referred to in section 243B;

"penalty amount" , in relation to an order under section 243B against a person, means the amount that the person is liable to pay the Commonwealth under the order;

"petition" means a petition under the *Bankruptcy Act 1966*;

"police officer" means:

(a) a member or special member of the Australian Federal Police; or

(b) a member of the police force of a State or Territory;

"property" means real or personal property of every description, whether situated in Australia or elsewhere and whether tangible or intangible and includes an interest in any such real or personal property;

"restraining order" means an order made under paragraph 243E (2) (c);

"trustee in bankruptcy" means:

(a) in relation to a bankruptcy—the trustee of the estate of the bankrupt;

(b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement;

(c) in relation to a deed of assignment, a deed of arrangement or a composition under Part X of the *Bankruptcy Act 1966*—the trustee of the deed or the composition; or

(d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate.

(2) Where a person who has obtained possession or control of a cheque, or was paid moneys by a cheque, in any of the circumstances set out in subsection (3), receives, in respect of the cheque, moneys in the form of cash, the moneys so received shall, for the purposes of this Division, be deemed to be moneys that came into his possession or under his control, or were paid to him, in the circumstances in which he obtained possession or control of the cheque, or was paid the moneys by the cheque.

(3) For the purposes of this Division, a person shall be taken to engage in a prescribed narcotics dealing if:

(a) he sells or otherwise deals in, or agrees to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act;

(b) he imports, or agrees to import, narcotic goods into Australia in contravention of this Act;

(c) he exports, or agrees to export, narcotic goods from Australia in contravention of this Act;

(d) he keeps, or agrees to keep, in his possession narcotic goods imported into Australia in contravention of this Act;

(e) he conspires with another person or other persons to import any narcotic goods into Australia, or to export any narcotic goods from Australia, in contravention of this Act; or

(f) he aids, abets, counsels or procures, or is in any way knowingly concerned in, the sale of, or other dealing in, narcotic goods imported into Australia in contravention of this Act, the importation of narcotic goods into Australia, or the exportation of narcotic goods from Australia, in contravention of this Act, or the keeping in the possession of any person of narcotic goods imported into Australia in contravention of this Act.

(4) A reference in this Division to a benefit derived by a person includes a reference to:

(a) a benefit derived, directly or indirectly, by the person; and

(b) a benefit derived, directly or indirectly, by another person at the request or direction of the first person.

(4A) A reference in this Division to the property of a person includes a reference to property in respect of which the person has a beneficial interest.

(5) Where, upon application being made to the Court under subsection 243E (1) and supported by an affidavit made by a police officer or an officer of Customs stating that he believes that any property is the property of a person, the Court makes a restraining order against that property, for the purposes of this Division, the property shall, while that order applies to the property, be deemed to be the property of that person.

(6) A reference in this Division to a proceeding for the recovery of a pecuniary penalty shall be read as a reference to a proceeding instituted under section 243B for an order under subsection (1) of that section.

Effective control of property

243AB. (1) Property, or an interest in property, may be subject to the effective control of a person within the meaning of this Division whether or not the person has:

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property.

(2) Without limiting the generality of any other provision of this Division, in determining:

(a) whether or not property, or an interest in property, is subject to the effective control of a person; or

(b) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of a person;

regard may be had to:

(c) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;

(d) a trust that has a relationship to the property; and

(e) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (c) or trusts of the kind referred to in paragraph (d), and other persons.

Pecuniary penalties

243B. (1) Subject to subsection (7), the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions may institute a proceeding in the Court, on behalf of the Commonwealth, for an order that a person pay a pecuniary penalty to the Commonwealth in respect of:

(a) a particular prescribed narcotics dealing engaged in by him; or

(b) prescribed narcotics dealings engaged in by him during a particular period.

(2) If, in a proceeding instituted under subsection (1), the Court is satisfied that the person in relation to whom the order is sought:

(a) has engaged in a particular prescribed narcotics dealing; or

(b) has, during a particular period, engaged in prescribed narcotics dealings;

the Court shall assess, in accordance with section 243C, the value of the benefits derived by the person by reason of his having engaged in that dealing, or in prescribed narcotics dealings during that period, as the case may be, and order the person to pay to the Commonwealth a pecuniary penalty equal to the value as so assessed.

(3) The Court may order a person to pay a pecuniary penalty under subsection (2) in relation to a particular prescribed narcotics dealing, or prescribed narcotics dealings during a particular period, whether or not the person has been convicted of an offence, or proceedings have been instituted in respect of any offence, committed in relation to that dealing or any of those dealings and whether or not any moneys or other goods have been seized under section 229A in relation to that dealing or any of those dealings.

(4) An amount payable by a person to the Commonwealth in accordance with an order made under subsection (2) shall, for all purposes, be deemed to be a civil debt due by the person to the Commonwealth.

(5) An order made by the Court under subsection (2) may be enforced as if it were an order made by the Court in civil proceedings instituted by the Commonwealth against the person to recover a debt due by the person to the Commonwealth.

(6) This section applies to and in relation to moneys that come, or other property that comes, into the possession or under the control of a person either within or outside Australia, and to benefits that are provided for a person either within or outside Australia.

(7) A proceeding under subsection (1) may be commenced:

(a) if the proceeding relates to a particular prescribed narcotics dealing engaged in by a person after the commencement of this section—within 6 years after that dealing took place; or

(b) if the proceeding relates to prescribed narcotics dealings during a particular period, being a period that commenced after the commencement of this section—within 6 years after the end of that period.

Assessment of pecuniary penalty

243C. (1) In this section, a reference to the defendant in relation to a proceeding under section 243B shall be read as a reference to a person against whom an order is sought in that proceeding.

(2) In a proceeding under section 243B, the value of the benefits derived by the defendant by reason of his having engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period shall be assessed by the Court having regard to the evidence before the Court concerning all or any of the following matters:

(a) the moneys, or the value of the property other than moneys, that came into the possession or under the control of:

(i) the defendant; or

(ii) another person at the request or by the direction of the defendant;

by reason of the defendant's having engaged in that dealing or in prescribed narcotics dealings during that period;

(b) the value of any benefit, other than a benefit of the kind referred to in paragraph (a) that was provided for:

(i) the defendant; or

(ii) another person at the request or by the direction of the defendant;

by reason of the defendant's having engaged in that dealing or in prescribed narcotics dealings during that period;

(c) in the case of a prescribed narcotics dealing that consisted of selling or otherwise dealing in narcotic goods—the market value, at the time of the dealing, of similar or substantially similar narcotic goods;

(d) in the case of a prescribed narcotics dealing that consisted of the doing of any act or thing other than selling or otherwise dealing in narcotic goods—the amount that was, or the range of amounts that were, at the time the dealing occurred, ordinarily paid for the doing of a similar or substantially similar act or thing;

(e) the value of the defendant's property before, during and after he engaged in that dealing, or before, during and after that period, as the case may be; and

(f) the defendant's income and expenditure before, during and after he or she engaged in that dealing, or before, during and after that period, as the case may be.

(3) Where evidence is given in a proceeding under section 243B that the value of the defendant's property during or after the defendant engaged in a particular prescribed narcotics dealing, or during, or after the end of, the end of a particular period during which he engaged in prescribed narcotics dealings, exceeded the value of the defendant's property before he engaged in that dealing, or before the commencement of that period, then, for the purposes of subsection (2) of that section, the Court shall, subject to subsection (4), treat the value of benefits derived by the defendant by reasons of his having engaged in that dealing or in prescribed narcotics dealings during that period as being not less than the amount of the greatest excess.

(4) Where, after evidence has been given in a proceeding under section 243B that the value of the defendant's property during or after the defendant engaged in a particular prescribed narcotics dealing, or during, or after the end of, the end of a particular period, exceeded the value of the defendant's property before he engaged in that dealing, or before the commencement of that period, the defendant satisfies the Court that the whole or a part of the excess was due to certain causes, being causes unrelated to his having engaged in that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be:

(a) if the defendant so satisfies the Court in respect of the whole of the excess—subsection (3) does not apply to the excess; or

(b) if the defendant so satisfies the Court in respect of a part of the excess—subsection (3) applies to and in relation to the excess as if it were reduced by the amount of that part.

(5) In a proceeding under section 243B, a police officer or an officer of Customs who is experienced in the investigation of narcotics offences may testify:

(a) with respect to the amount that, to the best of his information, knowledge and belief, was the market value of narcotic goods at a particular time or during a particular period; or

(b) with respect to the amount, or the range of amounts, that, to the best of his information, knowledge and belief, was the amount, or range of amounts, ordinarily paid at a particular time or during a particular period for the doing of an act or thing (not being the selling or other dealing in narcotic goods) comprising a prescribed narcotics dealing;

notwithstanding any rule of law or practice relating to hearsay evidence, and his testimony is *prima facie* evidence of the matters testified to.

(6) In calculating, for the purposes of a proceeding under section 243B, the value of benefits derived by the defendant by reason of his having engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, any expenses or outgoings of the defendant in connection with that dealing, or those dealings, shall be disregarded.

(7) The Court, in quantifying the value of a benefit for the purposes of this section, may treat as the value of the benefit the value that the benefit would have had if derived at the time when the valuation is being made and, without limiting this, may have regard to any decline in the purchasing power of money between the time when the benefit was derived and the time when the valuation is being made.

(8) For the purposes of this section, where property of a person vests in a trustee in bankruptcy, the property shall be taken to continue to be the property of the person.

Court may lift corporate veil etc.

243CA. (1) Where the Court is assessing the value of benefits derived by a person (in this section called "the defendant") because of engaging in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, the Court may treat as property of the defendant any property that, in the opinion of the Court, is subject to the effective control of the defendant.

(2) Where the Court makes, or has made, an order (in this section called **"a pecuniary penalty order"**) that the defendant pay a pecuniary penalty under section 243B, the Court may:

(a) on application by the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions; and

(b) if the Court is of the opinion that particular property is subject to the effective control of the defendant;

make an order declaring that the whole, or a specified part, of that property is available to satisfy the pecuniary penalty order.

(3) Where the Court declares that property is available to satisfy a pecuniary penalty order:

(a) the order may be enforced against the property as if it were the defendant's; and

(b) a restraining order may be made in respect of the property as if it were the defendant's property.

(4) Where the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions makes an application for an order under subsection (2) that property is available to satisfy a pecuniary penalty order against the defendant:

(a) the person (in this paragraph called **"the applicant"**) who makes the application shall give written notice of the application to the defendant and to any person who the applicant has reason to believe may have an interest in the property; and

(b) the defendant and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

Presumption of illegality of importation

243D. Where, in a proceeding under section 243B against a person, the Court is satisfied that the narcotic goods in relation to which the person is alleged to have engaged in a prescribed narcotics dealing or in prescribed narcotics dealings are goods reasonably suspected of having been imported into Australia in contravention of this Act, the Court shall, for the purposes of the proceeding, treat the narcotic goods as narcotic goods which have been imported into Australia in contravention of this Act unless it is established to the satisfaction of the Court that the narcotic goods were not imported into Australia or were not imported into Australia in contravention of this Act.

Court may make restraining order against property

243E. (1) Where the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions has instituted a proceeding under section 243B for an order that a person (in this section referred to as the **"defendant"**) pay a pecuniary penalty in relation to a particular prescribed narcotics dealing, or in relation to prescribed narcotics dealings during a particular period, the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions may make application to the Court, *ex parte*, for an order under paragraph (2) (c) against:

(a) specified property of the defendant;

(b) all the property of the defendant (including property acquired after the making of the order);

(c) specified property of the defendant and all other property of the defendant (including property acquired after the making of the order);

(d) all the property of the defendant (including property acquired after the making of the order) other than specified property; or

(e) specified property of a person other than the defendant.

(1A) The application under subsection (1) may be made:

(a) where the Court makes the order under section 243B—at any time before the liability of the defendant in respect of the pecuniary penalty has been discharged; or

(b) in any other case—at any time before the proceeding under section 243B is finally disposed of.

(2) Where:

(a) an application under subsection (1) is supported by:

(i) an affidavit of a police officer or an officer of Customs stating that he believes that:

(A) the defendant has engaged in the prescribed narcotics dealing to which the proceeding under section 243B relates, or in prescribed narcotics dealings during the period to which that proceeding relates; and

(B) benefits were derived by the defendant by reason of the defendant's having engaged in that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be;

and setting out the grounds on which he holds those beliefs; and

(ii) if the application seeks an order against specified property of the defendant—an affidavit of a police officer or an officer of Customs stating that he or she believes that the property is the property of the defendant and setting out the grounds on which he or she holds that belief; and

(b) the Court considers that, having regard to the matters contained in that affidavit or those affidavits, there are reasonable grounds for holding those beliefs;

the Court:

(c) shall, subject to subsection (2A), make an order:

(i) directing that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the order; and

(ii) if the Court is satisfied that the circumstances so require—direct the Official Trustee to take custody and control of the property, or such part of the property as is specified in the order; and

(d) may, subject to subsection (3), include in the order such provision (if any) in relation to the operation of the order as the Court thinks fit.

(2A) Where an application under subsection (1) seeks an order under paragraph (2) (c) against specified property of a person other than the defendant, the Court shall not make the order unless:

(a) the application is supported by an affidavit of a police officer or an officer of Customs stating that the officer believes that the property is subject to the effective control of the defendant; and

(b) the Court considers that, having regard to the matters contained in that affidavit, there are reasonable grounds for holding that belief.

(3) Paragraph (2) (d) does not authorize the Court to include in the order a provision postponing the operation of the order.

(4) Without limiting the power of the Court under paragraph (2) (d), the order against property:

(a) may set out conditions subject to which the order is to apply to all of that property, or to a specified part of that property;

(b) may make provision for a review of the operation of the order by the Court; and

(c) may make provision for meeting the reasonable living and business expenses of the defendant out of that property, or out of a specified part of that property.

(4A) The Court shall not make provision of the kind referred to in paragraph (4) (c) unless it is satisfied that the defendant cannot meet the expenses concerned out of property that is not subject to the order.

(5) The Court may refuse to make the order if the Commonwealth refuses or fails to give to the Court such undertakings as the Court deems appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

(6) For the purposes of an application under subsection (1), the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions may, on behalf of the Commonwealth, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

(7) Notwithstanding anything contained in the *Bankruptcy Act 1966*, moneys that have come into the possession, or under the control, of the Official Trustee in accordance with an order made under subsection (2) shall not be paid into the Common Investment Fund established in pursuance of section 20B of that Act.

(8) Where the Official Trustee is given a direction under subparagraph (2) (c) (ii) in relation to property, the Official Trustee may do anything that is reasonably necessary for the purpose of preserving the property including, without limiting the generality of this:

(a) becoming a party to any civil proceedings affecting the property;

(b) ensuring that the property is insured;

(c) if the property consists, wholly or partly, of securities or investments—realising or otherwise dealing with the securities or investments; and

(d) if the property consists, wholly or partly, of a business:

  (i) employing, or terminating the employment of, persons in the business; and

  (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis.

(9) Where the Official Trustee is given a direction under subparagraph (2) (c) (ii) in relation to shares in a company, the Official Trustee is entitled:

(a) to exercise the rights attaching to the shares as if it were the registered holder of the shares; and

(b) to do so to the exclusion of the registered holder.

(10) Neither paragraph (8) (c) nor subsection (9) limits the generality of the other.

(11) In proceedings dealing with an application for an order under paragraph (2) (c), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

Court may make further orders

243F. (1) Where the Court makes, or has made, a restraining order (in this section called the **"original order"**) against property of a person (in this section called the **"owner"**), the Court may, at the time it makes the original order or at any subsequent time, make such orders in relation to that property as the Court considers just and, without limiting the power so conferred on the Court, the Court may, at any time or from time to time, make an order:

(a) varying the original order in respect of the property to which it relates or any provision included in the original order by virtue of paragraph 243E (2) (d);

(b) regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the original order;

(c) determining any question relating to the property to which the original order relates, including any question relating to the liabilities of the owner, and the exercise of the powers, or the performance of the duties, of the Official Trustee, with respect to the property to which the original order relates;

(d) directing:

(i) the owner; or

(ii) if the owner is a body corporate—a director of the body corporate specified by the Court;

to give to the Minister, the Commissioner of Police, the Comptroller, the Director of Public Prosecutions or the Official Trustee, within a period specified in the order, a statement verified by the oath of the person making the statement, setting out such particulars of the property, or dealings with the property, of the owner as the Court thinks proper;

(e) for the examination on oath of the owner or another person before the Court or Registrar of the Court concerning the affairs of the owner, including the nature and location of the owner's property;

(ea) directing the owner or another person to do any act or thing necessary or convenient to be done to enable the Official Trustee to take custody and control of the property in accordance with the original order; or

(f) with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the Commonwealth in connection with the making of the original order.

(2) An application for an order under subsection (1) may be made:

(a) by the Official Trustee;

(b) by the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions;

(c) by the owner; or

(d) with the leave of the Court, by any other person.

(2A) Where:

(a) the Court made the original order against the property in reliance on the engaging by a person (in this subsection called the **"defendant"**) in a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and

(b) another person having an interest in the property applies to the Court for a variation of the order to exclude the interest from the order;

the Court shall grant the application if satisfied that the interest is not subject to the effective control of the defendant.

(3) Where:

(a) a person is examined before the Court, or the Registrar of the Court, under an order made under subsection (1); or

(b) an order made under subsection (1) directs a person to furnish a statement to the Minister, the Commissioner of Police, the Comptroller, the Director of Public Prosecutions or the Official Trustee;

the person is not excused from:

(c) answering a question when required to do so by the Court, or by the Registrar of the Court; or

(d) furnishing the statement, or setting out particulars in the statement;

as the case may be, on the ground that the answer to the question, or the statement or particulars, might tend to incriminate the person or make the person liable to a forfeiture or penalty.

(3A) Where a person:

(a) is examined before the Court, or the Registrar of the Court; or

(b) furnishes a statement to the Minister, the Commissioner of Police, the Comptroller, the Director of Public Prosecutions or the Official Trustee;

under an order made under subsection (1), then:

(c) a statement or disclosure made by the person in answer to a question put in the course of the examination; or

(d) the statement so furnished;

as the case may be, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure referred to in paragraph (c), or of the statement referred to in paragraph (d), is not admissible against the person in any civil or criminal proceeding except:

(e) a proceeding for giving false testimony in the course of the examination, or in respect of the falsity of the statement, as the case may be; or

(f) a proceeding for the recovery of a pecuniary penalty, for the purpose only of facilitating the assessment of the amount of the pecuniary penalty.

(4) In this section, unless the contrary intention appears:

(a) references to the original order shall be read as including references to the original order as varied under this section; and

(b) references to the Registrar of the Court shall be read as including references to a Deputy Registrar of the Court, a District Registrar of the Court and a Deputy District Registrar of the Court.

Official Trustee to discharge pecuniary penalty

243G. (1) Where:

(a) the Court makes an order under section 243B that a person pay a pecuniary penalty in relation to a particular prescribed narcotics dealing or in relation to prescribed narcotics dealings during a particular period; and

(b) at the time when the order is made, the Official Trustee has custody and control of property under a restraining order made, in reliance on the prescribed narcotics dealing or prescribed narcotics dealings, against:

(i) property of the person; or

(ii) property of another person in relation to which an order under subsection 243CA (2) is made;

the Court may include in the order under section 243B a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

(2) Where:

(a) the Court makes an order under section 243B for a person to pay a pecuniary penalty in relation to a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and

(b) a restraining order is subsequently made against:

(i) property of the person; or

(ii) property of another person in relation to which an order under subsection 243CA (2) is made;

in reliance on the prescribed narcotics dealing or prescribed narcotics dealings;

the Court may include in the restraining order a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

(3) For the purposes of enabling the Official Trustee to comply with a direction given by the Court under subsection (1) or (2), the Court may, in the order in which the direction is given or by a subsequent order:

(a) direct the Official Trustee to sell or otherwise dispose of such of the property that is under the control of the Official Trustee as the Court specifies; and

(b) appoint an officer of the Court or any other person to execute any deed or instrument in the name of a person who owns or has an estate, interest or right in the property and to do any act or thing necessary to give validity and operation to the deed or instrument.

(4) The execution of the deed or instrument by the person appointed by an order under subsection (3) has the same force and validity as if the deed or instrument had been executed by the person who owned or had the estate, interest or right in the property.

(5) Where the Official Trustee is given a direction under subsection (1) or (2) in relation to property, the Official Trustee shall not:

(a) if the property is money—apply the money in accordance with subsection (6) until the end of the appeal period; and

(b) if the property is not money—shall not sell or otherwise dispose of the property until the end of the appeal period.

(6) Where the Official Trustee is given a direction under subsection (1) or (2) in relation to property, the Official Trustee shall, as soon as practicable after the end of the appeal period:

(a) if the property is money:

(i) apply the money in payment of the costs, charges, expenses and remuneration, of the kind referred to in subsection 243P (1), incurred or payable in connection with the restraining order and payable to the Official Trustee under the regulations; and

(ii) subject to subsection (7), pay the remainder of the money to the Commonwealth; and

(b) if the property is not money:

(i) sell or otherwise dispose of the property;

(ii) apply the proceeds of the sale or disposition in payment of the costs, charges, expenses and remuneration of the kind referred to in subsection 243P (1), incurred or payable in connection with the restraining order or the sale or disposition and payable to the Official Trustee under the regulations; and

(iii) subject to subsection (7), pay the remainder of those proceeds to the Commonwealth.

(7) Where the money or proceeds to which subparagraph (6) (a) (ii) or (b) (iii) applies exceeds the penalty amount, the Official Trustee shall:

(a) pay to the Commonwealth an amount equal to the penalty amount; and

(b) pay the balance to the person whose property was subject to the restraining order.

(8) Where the Official Trustee pays, in accordance with a direction under this section, money to the Commonwealth in satisfaction of a person's liability under an order under section 243B, the person's liability under the order shall, to the extent of the payment be deemed to be discharged.

(9) Where:

(a) a restraining order is made against property in reliance on a particular prescribed narcotics dealing engaged in by the person or prescribed narcotics dealings engaged in by the person during a particular period; and

(b) before or after the restraining order is made, an order under section 243B has been or is made against the person in reliance on the prescribed narcotics dealing or prescribed narcotics dealings;

the appeal period in respect of the property is the period ending:

(c) if the period provided for the lodging of an appeal against the making of the order under section 243B has ended without such an appeal having been lodged—at the end of that period; or

(d) if an appeal against the making of the order under section 243B has been lodged—when the appeal lapses or is finally determined.

Revocation of order under section 243E

243H. **(1)** Where, after a restraining order has been made in relation to a proceeding for the recovery of a pecuniary penalty:

(a) no pecuniary penalty is imposed upon the determination of that proceeding;

(b) the pecuniary penalty imposed upon the determination of that proceeding is paid; or

(c) the Court is satisfied that it is, in all the circumstances, proper to do so;

the Court may, upon application being made to it by a person authorized to make an application under section 243F, revoke that order.

(2) The revocation of a restraining order that was made in relation to a proceeding for the recovery of a pecuniary penalty does not prevent the Court from making a further restraining order in relation to that proceeding.

(3) Without limiting the powers of the Court to make an order under subsection (1), the Court may revoke a restraining order upon the applicant:

(a) giving security satisfactory to the Court for the payment of any pecuniary penalty that may be imposed on him in the relevant proceeding; or

(b) giving undertakings satisfactory to the Court concerning the property of the applicant.

(4) Where the Court revokes or has revoked a restraining order, the Court may make such order or orders as it deems proper for or in relation to the discharge of the Official Trustee concerned from all liability in respect of the exercise by it of the powers conferred on it, and the performance by it of the duties imposed on it, under this Division in respect of the property of the person to whom the restraining order related.

Pecuniary penalty a charge on property

243J. (1) Where the Court makes, in relation to a proceeding (in this section referred to as the **"relevant proceeding"**) for the recovery of a pecuniary penalty from a person, a restraining order against property, upon the making of the order, there is created, by force of this section, a charge, on all the property to which the order relates, to secure the payment to the Commonwealth of any pecuniary penalty that the person may be ordered to pay in the relevant proceeding.

(2) Where a charge is created by subsection (1) on any property of a person upon the making of a restraining order, the charge ceases to have effect in respect of the property:

(a) upon the order ceasing to apply to the property by reason of the variation or revocation of the order;

(b) upon the determination of the relevant proceeding by way of the refusal of the Court to make an order for the payment of a pecuniary penalty by the person;

(c) upon payment by the person of any pecuniary penalty that he has been ordered to pay in the relevant proceeding;

(d) upon the person becoming a bankrupt;

(e) upon the sale or other disposition of the property:

(i) in pursuance of a direction of the Court under section 243G; or

(ii) by the owner of the property with the consent of the Court or of the Official Trustee; or

(f) upon the sale of the property to a *bona fide* purchaser for value who, at the time of purchase, has no notice of the charge;

whichever first occurs.

(3) The charge created on property by subsection (1):

(a) is subject to every charge or encumbrance to which the property was subject immediately before the order was made;

(b) has priority over all other encumbrances whatsoever; and

(c) subject to subsection (2), is not affected by any change of ownership of the property.

(4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind, the Official Trustee or the person who applied for the restraining order against that property may cause the charge so created to be registered under the provisions of that law and, if the Official Trustee or the person who applied for the restraining order, as the case may be, does so, a person who purchases or otherwise acquires the property after the registration of the charge shall, for the purposes of subsection (2), be deemed to have notice of the charge.

Contravention of restraining orders

243K. (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order is guilty of an offence.

Penalty: Imprisonment for 5 years.

(2) Where:

(a) a restraining order is made against property;

(b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order; and

(c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith;

the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions may apply to the Court for an order that the disposition or dealing be set aside.

(3) Where an application is made under subsection (2) in relation to a disposition or dealing, the Court may make an order:

(a) setting the disposition or dealing aside as from the day on which it took place; or

(b) setting the disposition or dealing aside as from the day of the order under this subsection and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.

Sale of property before bankruptcy

243L. (1) Where:

(a) the Commonwealth has, within 6 months before the presentation of a petition, or after the presentation of a petition, against a person, received moneys from the Official Trustee or an Official Receiver in pursuance of a direction under section 243G in relation to the liability of the person to pay a pecuniary penalty; and

(b) the person subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition;

the Commonwealth shall pay to the trustee in the bankruptcy an amount equal to the amount paid to the Commonwealth in accordance with the direction, less the taxed costs of the Minister, the Commissioner of Police, the Comptroller or the Director of Public Prosecutions in respect of the making of the direction under section 243G.

(2) Where the Commonwealth has paid to the trustee in bankruptcy an amount in accordance with subsection (1), the Commonwealth may prove in the bankruptcy for its debt as an unsecured creditor as if the order under section 243G had not been made.

(3) Notwithstanding anything contained in the *Bankruptcy Act 1966*, a person who purchases in good faith, property of a person who, after the purchase, becomes a bankrupt, under a sale of the property in pursuance of a direction given under section 243G acquires a good title to it as against the trustee in the bankruptcy.

Duties of the Official Trustee after receiving notice of presentation of creditor's petition etc.

243M. **(1)** Where, after the Official Trustee has been directed under subsection 243G (1) or (2) to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the presentation of a creditor's petition against the person is given to the Official Trustee, the Official Trustee:

(a) shall refrain from taking action to sell property of the person in pursuance of any direction to do so contained in an order under that section; and

(b) shall not pay 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 under subsection 243G (1) or (2) to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the reference to a bankruptcy court of a debtor's petition against the person is given to the Official Trustee, the Official Trustee:

(a) shall refrain from taking action to sell property of the person in pursuance of any direction to do so contained in an order under that section; and

(b) shall not pay 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 Trustee from personal liability in certain cases

243N. **(1)** Where:

(a) the Court has made a restraining order directing the Official Trustee to take custody and control of property of a person;

(b) the Official Trustee has taken custody and control of any property in the possession, or on the premises, of the person without notice of any claim by another person in respect of that property; and

(c) the person did not, at the date of the order, have any beneficial interest in the property referred to in paragraph (b);

the Official Trustee is not personally liable for any loss or damage arising from its having taken custody and control of the property sustained by a person claiming the property or an interest in the property, or for the cost of proceedings taken to establish a claim to the property or to an interest in the property, unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of custody and control of the property.

(2) Where the Official Trustee has, in accordance with a restraining order, taken custody and control of property of a person specified in the order, the Official Trustee is not personally liable for any loss or damage arising from its having taken custody and control of the property (being loss or damage sustained by some other person claiming the property or an interest in the property), or for the cost of proceedings taken to establish a claim to the property, or to an interest in the property, unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of custody and control of the property.

(3) The Official Trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of the Commonwealth or of a State or Territory upon or in respect of property of which it has been directed by a restraining order to take custody and control, being rates, land tax or municipal or other statutory charges that fall due on or after the date of that order, except to the extent, if any, of the rents and profits received by the Official Trustee in respect of that property on or after the date of that order.

(4) Where the Official Trustee who has been directed by a restraining order to take custody and control of a business carried on by a person carries on that business, the Official Trustee is not personally liable for any payment in respect of long service leave for which the person was liable or for any payment in respect of long service leave to which a person employed by the Official Trustee in its capacity of manager of the business, or the legal personal representative of such a person, becomes entitled after the date of that order.

Indemnification of Official Trustee

243NA. **(1)** The Commonwealth is by force of this subsection liable to indemnify the Official Trustee against any personal liability (including any personal liability as to costs) incurred by it for any act done, or omitted to be done, by it in the exercise, or purported exercise, of its powers and duties under this Division.

(2) Nothing in subsection (1) affects:

(a) any right that the Official Trustee has, apart from that subsection, to be indemnified in respect of any personal liability referred to in that subsection; or

(b) any other indemnity given to the Official Trustee in respect of any such personal liability.

(3) Where the Commonwealth makes a payment in accordance with the indemnity referred to in subsection (1), the Commonwealth has the same right of reimbursement in respect of the payment (including reimbursement under another indemnity given to the Official Trustee) as the Official Trustee would have if the Official Trustee had made the payment.

Indemnification of Official Receivers etc.

243NB. **(1)** The Commonwealth shall indemnify a person to whom this subsection applies against any liability incurred by the person:

(a) for any act done negligently, or negligently omitted to be done, by the person in the performance of the person's duties in relation to this Division; or

(b) for any act done by the person in good faith in the purported performance of the person's duties in relation to this Division.

(2) Subsection (1) applies to:

(a) persons who are Official Receivers under the *Bankruptcy Act 1966*;

(b) persons who perform any of the duties of such an Official Receiver in relation to this Division; or

(c) persons who assist such an Official Receiver in the performance of the Official Receiver's duties in relation to this Division.

Costs etc. payable to Official Trustee

243P. **(1)** The regulations may make provision for or in relation to:

(a) the costs, charges and expenses incurred in connection with; and

(b) the Official Trustee's remuneration in respect of;

the performance or exercise by the Official Trustee of functions, duties or powers under this Division.

(2) An amount equal to each amount of remuneration that the Official Trustee receives under the regulations shall be paid into the Consolidated Revenue Fund.

(3) Where there are no regulations in relation to a matter referred to in subsection (1):

(a) the regulations referred to in section 55 of the *Proceeds of Crime Act 1987* shall apply, so far as they are applicable, and with appropriate changes, in relation to the matter; and

(b) a reference in this Division (other than in this subsection) to regulations in relation to the matter shall be taken to be a reference to the regulations referred to in section 55 of the *Proceeds of Crime Act 1987*.

Notices

243Q. **(1)** Subject to subsection (2), where the Court makes a restraining order, or an order under section 243CA or 243F, against a person's property, the person who applied for the order (in this section called the **"applicant"**) shall give the person written notice of the order.

(2) Where:

(a) the Court makes a restraining order against a person's property; and

(b) the Court is satisfied that it would be in the public interest to delay giving notice of the order to the person;

the Court may order that giving the person notice of the order be delayed for such period as is specified in the order under this subsection and the applicant shall give the person notice of the restraining order as soon as practicable after the end of the period specified.

Reduction of pecuniary penalty

243R. **(1)** Where, before the Court makes an order directing a person to pay a pecuniary penalty in respect of a particular prescribed narcotics dealing engaged in by him, or of prescribed narcotics dealings engaged in by him during a particular period, any property of the person to which section 229A applied by reason of that prescribed narcotics dealing, or of a prescribed narcotics dealing during that period, had been seized as forfeited goods:

(a) if, before the imposition of the penalty, the property had been condemned or was deemed to have been condemned—the penalty shall be deemed to be reduced by an amount equal to the value of the property at the time when it was seized;

(b) if, after the imposition of the penalty and before the penalty is paid, the property is condemned or is deemed to be condemned or the person consents to the forfeiture of the property—the liability of the person in respect of the penalty shall be deemed to be reduced by an amount equal to the value of the property at the time when it was seized; and

(c) if the penalty is paid before the property is condemned or is to be deemed to be condemned—the Commonwealth is liable to pay to the person an amount equal to the value of the property at the date of its seizure.

(2) After a pecuniary penalty is imposed on a person in respect of a particular prescribed narcotics dealing engaged in by the person, or of prescribed narcotics dealings engaged in by him during a particular period, property of the person to which section 229A applies by virtue of that dealing, or of such a dealing during that period, shall not be seized as forfeited goods.

(3) The Court may make an order, in respect of property to which section 229A applies, being property that has been seized as forfeited goods, determining the value, at the time when it was seized, of that property for the purposes of this section.

Jurisdiction of the Court

243S. Jurisdiction is conferred on the Court to hear and determine applications under this Division.

Division 4—Penalty for making false statements etc.

Penalty for making false statements etc.

243T. (1) Subject to section 243V, where:

(a) a person, whether knowingly, recklessly or otherwise:

 (i) makes a statement to an officer that is false or misleading in a material particular; or

 (ii) omits from a statement made to an officer any matter or thing without which the statement is misleading in a material particular; and

(b) the amount of duty properly payable on particular goods exceeds the amount of duty that would have been payable on those goods if the amount were determined on the basis that the statement was not false or misleading;

the Comptroller may within 12 months after the statement was made, by notice in writing, require the owner of the goods (not being a person who is to be treated as the owner of the goods by reason of being an agent of the owner) to pay, within a period of 90 days after service of the notice, a penalty equal to twice the amount of the excess, or a penalty of $20, whichever is the greater.

(2) The notice may be served on the owner of the goods or on the agent of the owner.

(3) If an amount required to be paid in accordance with subsection (1) within a period of 90 days is not so paid it becomes, upon the expiration of that period, a debt due to the Commonwealth and may be recovered in a court of competent jurisdiction.

(4) Where a person in respect of whom a demand for payment of penalty in respect of particular goods has been made under subsection (1) makes application under subsection 273GA (2) for review of the decision as to the amount of duty payable on those goods:

(a) the period commencing on the making of that application and ending on the final determination of the amount of duty by the Administrative Appeals Tribunal or by a Court on appeal from the Tribunal shall not be taken into account in computing the period of 90 days referred to in subsections (1) and (3); and

(b) if it is determined, or ultimately determined, that the duty, or any part of the duty, demanded in respect of those goods is not payable, the demand for penalty shall thereupon be treated as if it were, and had always been, a demand for such amount, if any, as would be appropriate under subsection (1) having regard to that determination of the Tribunal or Court.

(5) Where the Comptroller serves a notice under subsection (2) in relation to a statement made, or an omission from a statement made, by a person, proceedings shall not be instituted under section 234 against that person in relation to that statement or omission.

Remission of penalty

243U. **(1)** Where a penalty is payable under section 243T as a result of a statement, or an omission from a statement, the Comptroller may, on the basis of a written application made to the Comptroller within 30 days after the Comptroller served the notice under subsection 243T (2) in relation to the statement or the omission from the statement, by the person liable to pay the penalty, remit the whole or any part of that penalty.

(2) Within 30 days after receiving an application for remission of penalty the Comptroller shall inform the applicant of the Comptroller's decision in relation to the application.

(3) Where the Comptroller fails to inform the applicant of the decision within 30 days after receiving the application, the Comptroller shall, for the purposes of section 273GA, be taken to have decided not to remit penalty.

(4) In considering an application under subsection (1) to remit the whole or a part of a penalty payable in respect of a statement or an omission from a statement, being a statement or omission made by the applicant or by an agent of the applicant, the Comptroller shall have regard only to the following matters:

(a) whether the applicant or the applicant's agent, as the case requires, had voluntarily admitted that the statement was, or was as a result of the omission, false or misleading;

(b) the risk to the revenue occasioned by such a statement or omission;

(c) the capacity of the applicant or of the applicant's agent, as the case requires, to avoid making such a statement or omission and the extent to which that capacity was exercised;

(d) the history of the applicant or of the applicant's agent, as the case requires, in relation to the making of statements or omissions giving rise to convictions under paragraph 234 (1) (d) or to liability for penalty under section 243T.

(5) Where a decision of the Administrative Appeals Tribunal on an application under subsection 273GA (2) or of a Court on an appeal from such a decision will result in a lesser amount of duty being payable in respect of imported goods than the amount demanded by a Collector, or in no duty being payable in respect of those goods, the Comptroller shall remit any penalty paid under section 243T in respect of those goods to the extent necessary to give effect to that decision of the Tribunal or Court.

Section 243T not to apply in certain cases

243V. (1) Where the owner of goods or the agent of the owner is uncertain whether particular information included in a statement made in respect of those goods might be regarded as false or misleading in a material particular, that owner or agent may, by writing included in the statement, nominate that information as information of which the owner or agent is uncertain and set out the reasons for that uncertainty, and, where the owner or agent does so, no penalty shall be imposed under section 243T in relation to that information.

(2) Where the owner of goods or the agent of the owner is uncertain whether, by reason of the omission of particular information from a statement made in respect of those goods, that statement might be regarded as misleading in a material particular, that owner or agent may, by writing included in the statement, specify the information that has been omitted and set out the reasons for uncertainty concerning the effect of its omission, and, where the owner or agent does so, no penalty shall be imposed under section 243T in relation to that omission.

PART XIV—CUSTOMS PROSECUTIONS

Interpretation

244. Proceedings by the Customs for the recovery of penalties other than a pecuniary penalty referred to in section 243B under this Act or for the condemnation of ships, aircraft or goods seized as forfeited are herein referred to as Customs Prosecutions.

Institution of prosecutions

245. (1) Customs prosecutions may be instituted by the Comptroller in the name of the office 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 of District of a State;

(e) in a Local Court, being a Local Court of full jurisdiction, of South Australia or of the Northern Territory; or

(f) in a court of summary jurisdiction of a State, of the Australian Capital Territory or of the Northern Territory.

(2) Where a Customs prosecution for a pecuniary penalty that, but for this section, would exceed $20,000 is instituted in a Court referred to in paragraph (1) (d) or (e), the amount of that penalty that exceeds $20,000 shall be taken to have been abandoned.

(4) Where a Customs prosecution for a pecuniary penalty that, but for this subsection, would exceed $5,000 is instituted in a court referred to in paragraph (1) (f), the amount of that penalty that exceeds $5,000 shall be taken to have been abandoned.

Prosecutions in accordance with practice rules

247. Every Customs prosecution in a court referred to in subsection 245 (1) may be commenced prosecuted and proceeded with in accordance with any rules of practice (if any) established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

State Court practice

248. Subject to the provisions of this Act the provisions of the law relating to summary proceedings in force in the State or Territory where the proceedings are instituted shall apply to all Customs prosecutions before a Court of summary jurisdiction in a State or Territory, and an appeal shall lie from any conviction order for condemnation or order of dismissal to the Court and in the manner provided by the law of the State or Territory where such conviction or order is made for appeals from convictions or orders of dismissal, and notwithstanding anything to the contrary in the law of the State or Territory, an appeal shall lie from an order of dismissal to any court to which and in the manner in which an appeal lies from a conviction.

Commencement of prosecutions

249. Customs prosecutions may be instituted at any time within 5 years after the cause thereof.

Information to be valid if in words of Act

250. All informations summonses other originating processes convictions condemnations and warrants shall suffice if the offence or forfeiture is set forth as nearly as may be in the words of this Act.

Property in goods subject to control of Customs

250A. Where in any proceedings on behalf of the Customs in relation to any goods subject to the control of the Customs it is necessary to allege any property in the goods, the goods may be alleged to be the property of the Collector without mentioning his name.

No objection for informality

251. No objection shall be taken or allowed to any information, summons or other originating process for any alleged defect therein in substance or in form or for any variance between such information, summons or other originating process and the evidence adduced at the hearing in support thereof, and the Court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable, and if any such defect or variance shall appear to the Court to be such that the defendant has been thereby deceived or misled it shall be lawful for the Court upon such terms as it may think just to adjourn the hearing of the case to some future day.

Conviction not to be quashed

252. No conviction warrant of commitment or condemnation order or other proceeding matter or thing done or transacted in relation to the execution or carrying out of any Customs Act shall be held void quashed or set aside by reason of any defect therein or want of form and no party shall be entitled to be discharged out of custody on account of such defect.

Protection to witnesses

253. No witness on behalf of the Minister, Comptroller or Collector in any Customs prosecution shall be compelled to disclose the fact that he received any information or the nature thereof or the name of the person who gave such information, and no officer appearing as a witness shall be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

Defendant competent witness

254. **(1)** In every Customs prosecution the defendant shall be competent to give evidence.

(2) In every Customs prosecution except for an indictable offence or for an offence directly punishable by imprisonment the defendant shall be compellable to give evidence.

Averment of prosecutor sufficient

255. **(1)** In any Customs prosecution the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter or matters averred.

(2) This section shall apply to any matters so averred although:

(a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or

(b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(3) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4) The foregoing provisions of this section shall not apply to:

(a) an averment of the intent of the defendant; or

(b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

Proof of proclamation etc.

256. The production of the *Gazette* containing any proclamation gazette notice or regulation appearing to have been issued or made under this Act or the production of any document certified by the 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.

Conduct by directors, servants or agents

257. **(1)** Where, in a Customs prosecution in respect of any conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

(a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) Where, in a Customs prosecution in respect of any conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate:

(a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.

Collector may levy on goods in his possession

259. When any pecuniary penalty adjudged against any person is unpaid the Collector may levy the same by sale of any goods belonging to such person which may then or thereafter be subject to the control of the Customs.

Imprisonment not to release penalty

261. No person shall be twice imprisoned upon the same conviction but the suffering of imprisonment for non-payment of a penalty shall not release the penalty or affect the right of the Customs to collect the amount in any manner provided by this Act other than by imprisonment of the person convicted.

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 Comptroller may direct.

(2) This section does not apply to:

(a) penalties recovered in proceedings under subsection 243B (1);

(b) penalties recovered in proceedings instituted by a member of the Australian Federal Police; or

(c) forfeitures of narcotic-related goods.

PART XV—TENDERS FOR RIGHTS TO ENTER GOODS FOR HOME CONSUMPTION AT CONCESSIONAL RATES

Interpretation

265. **(1)** In this Part:

"determined" , in relation to a quantity or a value, means determined in accordance with a tender;

"item of a Customs Tariff" and **"proposed item of a Customs Tariff"** have the same respective meanings as in Part XVI;

"particular goods" includes goods included in a particular class or kind of goods;

"scheme" means a scheme formulated by the Minister under section 266.

Tender schemes

266. **(1)** The Minister may, by instrument in writing, formulate a scheme for calling, and dealing with, tenders for the right to enter for home consumption during a period, or each of a number of periods, a determined quantity of particular goods, or particular goods of a determined value, at concessional rates of duty.

(2) A call for tenders that relates to determined quantities of particular goods shall include a statement that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the particular goods the subject of the call, the value of the goods is to be calculated by reference to a value set out in the statement as the value of an appropriate unit of the goods.

(3) In determining the value of an appropriate unit of particular goods to be set out in a statement referred to in subsection (2), the Minister shall have regard to the average value of the corresponding unit in relation to goods of the same kind that were imported into Australia and entered for home consumption during the financial year that ended on the 30 June immediately preceding the date on which the call for tenders is made.

(4) A call for tenders shall include a statement that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the particular goods the subject of the call, the prescribed percentage of the value of the goods is to be the percentage set out in the statement.

Undertakings relating to tenders

267. (1) Where, in accordance with a call for tenders made under a scheme, a person furnishes a tender for the right to enter for home consumption during a period, or each of a number of periods, a quantity to be determined in accordance with that tender of particular goods, or particular goods of a value to be determined in accordance with that tender, at rates of duty to be determined in accordance with that tender, that tender shall not be considered unless it is accompanied by an undertaking in writing by that person, in terms satisfactory to the Comptroller, that, if that tender is accepted and:

(a) the *Customs Tariff Act 1987* is so altered or proposed to be so altered that rates of duty determined in accordance with that tender are set out in items, or proposed items, of a Customs Tariff that are expressed to apply to goods as prescribed by by-law; and

(b) the Comptroller makes a determination under section 273 by virtue of which those items or proposed items apply to the quantity determined in accordance with that tender of those goods, or the quantity of those goods having the value determined in accordance with that tender, to be entered for home consumption by that person during that period, or each of those periods, as the case may be;

the person will, during that period, or each of those periods, as the case may be, enter for home consumption under:

(c) any of those items, or proposed items; or

(d) any appropriate item, or proposed item, of a Customs Tariff that is not expressed to apply to goods as prescribed by by-law;

that quantity of those goods, or the quantity of those goods having that value.

(2) An undertaking referred to in subsection (1) that relates to a determined quantity of goods shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the value of those goods is to be calculated by reference to the value per unit of those goods as set out in the statement, being the value per unit set out in the statement included, in accordance with subsection 266 (2), in the relevant call for tenders.

(3) An undertaking referred to in subsection (1) shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* and the *Customs Securities (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the prescribed percentage of the value of the goods is to be the percentage set out in the statement, being the percentage set out in the statement included, in accordance with subsection 266 (4), in the relevant call for tenders.

(4) In this section, a reference to the relevant call for tenders in relation to an undertaking, shall be read as a reference to the call for tenders in accordance with which the tender to which the undertaking relates was furnished.

Transfers of rights to enter goods for home consumption at concessional rates of duty

268. (1) A scheme may provide for the transfer, with the approval of the Comptroller, from one person to another of a right to enter for home consumption during a period, or each of a number of periods, a specified quantity of particular goods, or particular goods of a specified value, at concessional rates of duty.

(2) The Comptroller shall not give an approval to a transfer under a scheme of a right to enter for home consumption a specified quantity of particular goods, or particular goods of a specified value, unless the transferee:

(a) gives an undertaking, in writing, in terms satisfactory to the Comptroller, that, if by virtue of a determination under section 273 the items, or proposed items, of a Customs Tariff to which the undertaking given by the transferor in relation to the goods related were to apply to goods entered for home consumption by the transferee in the exercise of the right, the transferee will, in the exercise of that right, enter for home consumption those goods, or the quantity of those goods having that value, under any of those items or proposed items or under any appropriate item, or proposed item, of a Customs Tariff that is not expressed to apply to goods as prescribed by by-law; and

(b) if so required by a Collector, gives a security for payment of any penalty in connection with the undertaking that the transferee may become liable to pay to the Commonwealth under the *Customs Undertakings (Penalties) Act 1981*.

(3) An undertaking referred to in subsection (2) that relates to a specified quantity of goods shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the value of those goods is to be calculated by reference to the value per unit of those goods as set out in the statement, being a value per unit that was set out in the corresponding statement in the undertaking given by the transferor in relation to those goods.

(4) An undertaking referred to in subsection (2) shall include a statement acknowledging that, for the purposes of the application of the *Customs Undertakings (Penalties) Act 1981* in relation to the goods to which the undertaking relates, the prescribed percentage of the value of the goods is to be the percentage set out in the statement, being the percentage set out in the corresponding statement in the undertaking given by the transferor in relation to those goods.

Revocation or variation of undertaking

269. A person who has given an undertaking in accordance with section 267 or 268 may, with the approval of the Comptroller, 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 Schedule 4 to the *Customs Tariff Act 1987* that is expressed to apply to goods that a Commercial Tariff Concession Order declares are goods to which the item applies;

"repair" , in relation to goods, includes renovate.

(2) A reference in this Part to the *Customs Tariff Act 1987* 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 subsection (3), for the purposes of this Part, goods shall be taken to serve similar functions to other goods unless the Comptroller 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 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.

(8) For the purposes of this Part, a person shall be taken to be capable of repairing particular goods in the normal course of business if, in the normal course of business, the person is prepared to accept orders to repair those goods.

Commercial Tariff Concession Orders

269C. **(1)** Subject to this Part, where the Comptroller, 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 Comptroller shall make a written order, declaring that the particular goods are goods to which a prescribed item specified in the order applies.

(1A) Subject to this Part, where the Comptroller, after considering an application under section 269G for the making of an order under this section in respect of particular goods, is satisfied that there is no person in Australia who is capable of repairing the particular goods in the normal course of business, the Comptroller shall make a written order declaring that the particular goods sent out of Australia in order to be repaired are goods to which a prescribed item specified in the order applies.

(1B) Subject to this Part, where the Comptroller, after considering an application under section 269G for the making of an order under this section in respect of goods (in this subsection referred to as the **"relevant goods"**) included in a particular class or kind of goods is satisfied that:

(a) when the relevant goods are in a particular condition they would need to be repaired; and

(b) when the relevant goods are in that condition there is no person in Australia who is capable of repairing the relevant goods in the normal course of business;

the Comptroller shall make a written order declaring that the relevant goods sent out of Australia when in that condition in order to be repaired are goods to which a prescribed item specified in the order applies.

(1C) An order provided for by subsection (1), (1A) or (1B) is to be known as a Commercial Tariff Concession Order.

(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 particular goods are also goods to which that prescribed item applies.

(3) A reference in paragraph (1) (a) or (b) to **"the particular goods"** shall, in the 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 Comptroller 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 subsection (1), a declaration by regulations for the purposes of that subsection may be a declaration by reference to goods to which a particular item, sub-item, paragraph or subparagraph in Schedule 3 to the *Customs Tariff Act 1987* applies at a particular time.

Comptroller may refuse to make certain concession orders

269E. **(1)** The Comptroller may, in his or her discretion, refuse to make a concession order under subsection 269C (1) in respect of particular goods if, in his or her opinion, the making of the order would be likely to have a substantially adverse effect on the market for any goods produced in Australia.

(1A) The Comptroller may, in his or her discretion, refuse to make a concession order under subsection 269C (1A) or (1B) in respect of particular goods if, in his or her opinion, the making of the order would be likely to have a substantially adverse effect on the market for any goods produced, for any work carried out, or for any services provided, in Australia.

(1B) Where, in the opinion of the Comptroller, after having regard to the matters referred to in subsection (2), the making of a particular concession order under subsection 269C may not be in the national interest, the Comptroller must refer the application for the concession order to the Minister so that the Minister can determine that matter.

(1C) Where a particular application for a concession order is referred to the Minister and the Minister determines that the making of the order is not in the national interest:

(a) the Minister must inform the Comptroller, in writing, to that effect and give the Comptroller a statement of the reasons why he or she has so determined; and

(b) the Comptroller, upon being so informed, must refuse to make that order.

(2) The Comptroller, in considering for the purposes of paragraph (1) (b) or (1A) (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 subsections 22 (1) 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 Comptroller refuses to make a concession order in respect of particular goods because the Minister has determined that the making of the order is not in the national interest, the Comptroller 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 the Comptroller has refused to make the order because the Minister has determined that the making of the order would not be in the national interest; and

(d) setting out the Minister's reasons for so determining.

Concession orders not to contravene international agreements

269F. Where the Comptroller 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 Comptroller 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 Comptroller 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 subsection (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 subsection (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 subsection (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 subsection (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 subsection 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 makes a report to the Minister in accordance with the *Industries Assistance Commission Act 1973* (other than a report resulting from a request under subsection 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 Comptroller considers to be appropriate.

(2) Where the Comptroller 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 Comptroller decides not to make a concession order for which an application, other than an application deemed to have been made under subsection 269J (1) or (2), has been 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 subsection (1) in respect of a concession order does not prevent the Comptroller giving further consideration to the 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 etc.

269L. The Comptroller 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 subsection 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 subparagraph (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 subsection (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 subsection 269P (10)) in respect of particular goods shall be deemed to have come into effect on such day before the making of the order as is specified in the order.

(2) Subject to subsections 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 day on which it comes into effect.

(3) Subject to subsections (4), (6) and (7), the day to be specified in a concession order for the purposes of subsection (1) is the day occurring 28 days before the day on which the application for the order was made.

(3A) Where the Comptroller, at the time of making a decision in respect of an application for a concession order, is of the opinion:

(a) that he or she would not have been satisfied as required by subsection 269C (1) or (1A) or (1B), whichever is applicable, had the Comptroller been required to decide the matter on a day 28 days before the day on which the application was actually made; and

(b) that he or she would have become so satisfied on a later day (in this subsection called the **"production cessation day"**) occurring before the making of the first-mentioned decision;

the Comptroller must make a concession order arising from that application but the day to be specified in the order for the purposes of subsection (1) is the production cessation day.

(3B) Where the Comptroller, at the time of making a decision in respect of an application for a concession order, is of the opinion:

(a) that he or she would have been satisfied as required by subsection 269C (1) or (1A) or (1B), whichever is applicable, had the Comptroller been required to decide the matter on a day 28 days before the day on which the application was actually made; and

(b) that he or she would have ceased to be so satisfied on a later day (in this subsection called the **"production commencement day"**) occurring before the making of the first-mentioned decision;

the Comptroller must make a concession order arising from the application but the order has effect only until the end of the day before the production commencement day.

(4) Subject to subsections (6) and (7), where, in relation to a concession order in respect of particular goods, the Comptroller is satisfied (whether by reason of an application under subsection (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 subsection (1) shall be the date that the Comptroller 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 Comptroller to consider whether he should perform his duty under subsection (4) in relation to the order, setting out particulars in support of his application under this subsection.

(6) Subject to subsection (7), where:

(a) the Comptroller proposes to make a concession order; and

(b) there are 2 or more applications for the order;

the day to be specified in the order for the purposes of subsection (1) shall be the earliest day that, in accordance with subsection (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 subsection 269P (1) also related; and

(b) the Comptroller is satisfied that the earlier order should not have been revoked;

the day to be specified in the order for the purposes of subsection (1) shall be the day on which the revocation of the earlier order came into effect.

Revocation of concession orders

269P. **(1)** Where the Comptroller 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 Comptroller may, in his discretion, by order in writing revoke the first-mentioned concession order.

(2) The circumstances in which the Comptroller may exercise his discretion under subsection (1) not to revoke a concession order include, but are not limited to, the case where he considers that the revocation of the concession order would give an unfair advantage to any person.

(2A) Where the Comptroller becomes satisfied that a concession order that is in force has become obsolete, the Comptroller may, by order in writing, revoke the concession order.

(2B) Where the Comptroller becomes satisfied that, because of an amendment of a Customs Tariff or otherwise, a concession order was not, on and after a particular day (which may be the day on which the concession order came into effect) a concession order in respect of the particular goods in respect of which it was intended to make the concession order, the Comptroller may, by order in writing, revoke the concession order.

(2C) A revocation under subsection (2B) of a concession order comes into effect on the date specified in the order of revocation, not being a date earlier than the date of the making of the order.

(3) A revocation under subsection (1) or (2A) comes into effect on the date on which the order of revocation is made.

(4) Where a concession order is revoked under subsection (1), (2A) or (2B), 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 subsection (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 subsection 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 subsection (8), where a concession order is revoked under subsection (1), (2A) or (2B) or by virtue of subsection (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 subsection (1), (2A) or (2B) or by virtue of subsection (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 subparagraph (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 subsection (1) or by virtue of subsection (6); and

(b) the Comptroller 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 Comptroller shall make a written order declaring that particular goods, being that remainder of the first-mentioned particular goods, are goods to which the prescribed 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 subsection.

(11) Where a concession order is revoked under subsection (2B), the Comptroller shall make a written order declaring that particular goods, being the particular goods in respect of which it was intended to make the revoked concession order, are goods to which the prescribed 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 earliest date on which the revoked concession order was not a concession order in respect of the particular goods in respect of which it was intended to make the revoked concession order, which date shall be specified in the order under this subsection.

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 Comptroller:

(a) makes a concession order (not being an order under subsection 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 subsection 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 Comptroller revokes a concession order under subsection 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 Comptroller may, by instrument in writing published in the *Gazette*:

(a) direct that the factory or works cost of goods is to be determined in a specified manner; and

(b) direct that the value of 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 subsection (2)), 48A, 48B, 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

Division 1—Preliminary

Interpretation

269T. (1) In this Part, unless the contrary intention appears:

"Anti-Dumping Act" means the *Customs Tariff (Anti-Dumping) Act 1975*;

"Authority" means the Anti-Dumping Authority established by section 4 of the *Anti-Dumping Authority Act 1988*;

"countervailing duty" means duty payable on goods under section 10 (other than duties so payable by virtue of a declaration under subsection 10 (2B), (2C) or (2D)) or under section 11 of the Anti-Dumping Act;

"countervailing duty notice" means a notice published by the Minister under subsection 10 (1) or (2) or 11 (1) or (2) of the Anti-Dumping Act;

"determination" means a determination in writing;

"direction" means a direction in writing;

"dumping duty" means a duty payable on goods under section 8 or 9 of the Anti-Dumping Act;

"dumping duty notice" means a notice published by the Minister under subsection 8 (1) or (2) or 9 (1) or (2) of the Anti-Dumping Act;

"importer" , in relation to goods exported to Australia, means:

(a) if paragraph (b) or (d) does not apply—the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed; or

(b) if the goods are taken from parts beyond the seas to an Australian resources installation or if they are goods on board an overseas resources installation at the time when it is attached to the Australian seabed—the beneficial owner of the goods at the time when they are imported into Australia; or

(c) if the goods are an overseas resources installation that becomes attached to the Australian seabed—the beneficial owner of the installation at the time when it is imported into Australia; or

(d) if the goods are taken from parts beyond the seas to an Australian sea installation or are goods on board an overseas sea installation at the time when it is installed in an adjacent area or a coastal area—the beneficial owner of the goods at the time when they are imported into Australia; or

(e) if the goods are an overseas sea installation that becomes installed in an adjacent area or in a coastal area—the beneficial owner of the installation at the time when it is imported into Australia;

"interested party" , in relation to an application made to the Comptroller under section 269TB requesting that the Minister publish a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application, means:

(a) the applicant;

(b) a person representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods;

(c) any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and

(d) the Government of the country from which the goods the subject of the application have been or are likely to be exported or of any country that has exported or is likely to export to Australia like goods;

"like goods" , in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

(2) For the purposes of this Part, goods, other than unmanufactured raw products, shall not be taken to have been produced in Australia unless:

(a) the goods were wholly or partly manufactured in Australia; and

(b) not less than one quarter of the factory or works cost of the goods is represented by the sum of:

(i) the value of labour in Australia;

(ii) the value of materials in Australia; and

(iii) the factory overhead expenses incurred in Australia in respect of the goods.

(2A) A reference in this Part to the amount of the export price of goods, to the amount of the normal value of goods, to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods or to the amount of freight shall, where that amount is not expressed in Australian currency, be read as a reference to the equivalent amount in Australian currency.

(2B) For the purposes of this Part, where, during the exportation of goods to Australia, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.

(3) For the purposes of subsection (2), goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.

(4) For the purposes of this Part, there shall be taken to be an Australian industry in respect of goods of a particular kind if there is a person who produces like goods in Australia or there are 2 or more such persons.

(5) A reference in this Act to goods the subject of an application under section 269TB is a reference to goods referred in the application:

(a) that have been imported into Australia;
(b) that are likely to be so imported; or
(c) that may be so imported, being like goods to goods to which paragraph (a) or (b) applies.

(6) Sundays and public holidays shall, notwithstanding the definition of "days" in section 4 be counted as days for the purpose of computing a period for the purposes of this Part but nothing in this subsection shall derogate from the operation of section 36 of the *Acts Interpretation Act 1901*.

Anti-dumping measures not to apply to goods of New Zealand origin

269TAAA. **(1)** This Part, so far as it relates to duty that may become payable under section 8 or 9 of the Anti-Dumping Act, does not apply to goods that are the produce or manufacture of New Zealand.

(2) In subsection (1):
"goods" includes goods imported into Australia before the commencement of this section.

Arms length transactions

269TAA. **(1)** For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:

(a) there is any consideration payable for or in respect of the goods other than their price; or
(b) the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

(c) in the opinion of the Minister the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

(2) Without limiting the generality of subsection (1), where:

(a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and

(b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;

the Minister may, for the purposes of paragraph (1) (c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.

(3) In determining, for the purposes of subsection (2), whether goods are sold by an importer at a loss, the Minister shall have regard to:

(a) the amount of the price paid or to be paid for the goods by the importer; and

(b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods; and

(c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and

(d) such other matters as the Minister considers relevant.

(4) For the purposes of this Part, 2 persons shall be deemed to be associates of each other if, and only if:

(a) both being natural persons:

(i) they are connected by a blood relationship or by marriage or by adoption; or

(ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;

(b) both being bodies corporate:

(i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or

(ii) both of them together control, directly or indirectly, a third body corporate; or

(iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them; or

(c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate); or

(d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or

(e) they are members of the same partnership.

Export price

269TAB. (1) For the purposes of this Part, the export price of any goods exported to Australia is:

(a) where:

(i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and

(ii) the purchase of the goods by the importer was an arms length transaction;

the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation; or

(b) where:

(i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and

(ii) the purchase of the goods by the importer was not an arms length transaction; and

(iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer;

the price at which the goods were so sold by the importer to that person less the prescribed deductions; or

(c) in any other case—the price that the Minister determines having regard to all the circumstances of the exportation.

(2) A reference in paragraph (1) (b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to:

(a) any duties of Customs or sales tax paid or payable on the goods; and

(b) any costs, charges or expenses arising in relation to the goods after exportation; and

(c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1) (b), is to be regarded as the rate of profit on the sale by the importer.

(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

(4) For the purposes of subsection (3), the Minister may disregard any information that he or she considers to be unreliable.

(5) Paragraphs (1) (a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.

Normal value of goods

269TAC. **(1)** Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(2) Subject to this section, where the Minister:

(a) is satisfied that:

(i) by reason of the absence of sales that would be relevant for the purpose of determining a price under subsection (1); or

(ii) by reason that the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) are not suitable for use in determining such a price;

the normal value of goods exported to Australia cannot be ascertained under subsection (1); or

(b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);

the normal value of the goods for the purposes of this Part is:

(c) except where paragraph (d) applies, the sum of:

(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and

(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export:

(A) such amounts as the Minister determines would be the delivery charges and other costs necessarily incurred in that sale; and

(B) subject to subsection (13), an amount calculated in accordance with such rate, if any, as the Minister determines would be the rate of profit on that sale; or

(d) where the Minister so directs, the price determined by the Minister to be representative of the price paid for like goods sold in the ordinary course of trade in the country of export for export to a third country, being sales that are arms length transactions.

(3) Where the Minister gives a direction under paragraph (2) (d) in relation to the ascertainment of the normal value of goods for the purposes of this Part, the price determined by the Minister for the purposes of that paragraph:

(a) is to be a price that, by reason of the quantity of goods, being like goods sold in the ordinary course of trade in the country of export for export to the third country, being sales that are arms length transactions, for which the price has been paid, is representative of the price paid in such sales of those goods; and

(b) may be the highest price paid for like goods sold in the ordinary course of trade in the country of export for export to the third country, being sales that are arms length transactions.

(4) Subject to subsections (6) and (8), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding subsections because the Government of the country of export:

(a) has a monopoly, or substantial monopoly, of the trade of the country; and

(b) determines or substantially influences the domestic price of goods in that country;

the normal value of the goods for the purposes of this Part is to be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:

(c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions;

(d) a value equal to the price determined by the Minister to be representative of the price of like goods produced or manufactured in a country determined by the Minister and sold for export from that country to another country in the ordinary course of trade, being sales that are arms length transactions;

(e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:

(i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;

(ii) such amounts as the Minister determines are the delivery charges and other costs necessarily incurred in selling the like goods;

(iii) an amount calculated in accordance with such rate, if any, as the Minister determines is to be regarded as the rate of profit on the sale of the like goods;

(f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arms length transactions.

(5) Where the normal value of goods for the purposes of this Part is a value ascertained in accordance with paragraph (4) (d), the price determined by the Minister for the purposes of that paragraph:

(a) is to be a price that, by reason of the quantity of goods, being like goods produced or manufactured in the country determined by the Minister and sold for export from that country to the other country in the ordinary course of trade, being sales that are arms length transactions, for which the price has been paid, is representative of the price paid in such sales of those goods; and

(b) may be the highest price paid for like goods produced or manufactured in the country determined by the Minister and sold for export from that country to the other country in the ordinary course of trade, being sales that are arms length transactions.

(6) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections, the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

(7) For the purposes of subsection (6), the Minister may disregard any information that he or she considers to be unreliable.

(8) Where the normal value of goods exported to Australia is the price paid for like goods and that price and the export price of the goods exported:

(a) relate to sales occurring at different times; or

(b) are not in respect of identical goods; or

(c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;

that price paid for like goods is to be taken to be that price paid adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

(9) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2) (c) or (4) (e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

(10) Where:

(a) the actual country of export of goods exported to Australia is not the country of origin of the goods; and

(b) the Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this Part as if the country of origin were the country of export;

he or she may direct that the normal value of the goods is to be so ascertained.

(11) For the purposes of subsection (10), the country of origin of goods is:

(a) in the case of unmanufactured raw products—the country of which they are products; or

(b) in any other case—the country in which the last significant process in the manufacture or production of the goods was performed.

(12) Where the Minister is satisfied, in relation to goods exported to Australia, that:

(a) the price paid for like goods:

(i) sold for home consumption in the country of export in sales that are arms length transactions; or

(ii) sold in the country of export for export to a third country in sales that are arms length transactions;

is, and has been for an extended period of time and in respect of a substantial quantity of goods, less than the sum of:

(iii) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and

(iv) such other amounts as the Minister determines to be the costs necessarily incurred in the sale of the goods by the seller of the goods; and

(b) it is likely that the seller of the goods referred to in paragraph (a) will not be able to fully recover the amounts referred to in subparagraphs (a) (iii) and (iv) within a reasonable period of time;

the price so paid for the goods referred to in paragraph (a) is to be taken not to have been paid in the ordinary course of trade.

(13) Where, because of the operation of subsection (12), the normal value of goods is required to be determined under subsection (2), the Minister shall not include in his or her calculation of that normal value any profit component under sub-subparagraph (2) (c) (ii) (B).

Minister may re-ascertain certain normal values

269TAD. Where the Minister has, for the purpose of publishing a notice under section 269TG or 269TH declaring that section to apply to goods that may be imported into Australia, being like goods to goods that have been so imported, ascertained the normal value of the imported goods, the Minister may, at any time, and from time to time, if the Minister is of the opinion that any factor relevant to the ascertainment of the normal value of goods to which that section applies has altered, re-ascertain that normal value and, where the Minister does so, the Minister is to publish that normal value as so re-ascertained in the *Gazette* unless, in the opinion of the Minister, the publication of that information would adversely affect the business or commercial interests of any person.

Material injury to industry

269TAE. (1) In determining, for the purposes of section 269TG or 269TJ, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, by reason of any circumstances in relation to the exportation of goods to Australia from another country (in this subsection called the **"country of export"**), the Minister may, without limiting the generality of that section, have regard to:

(a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and

(b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and

(c) any change or likely change, during a particular period, in the proportion that:

 (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or

 (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia;

 bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

(d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and

(e) the difference between:

 (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and

 (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and

(f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and

(g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and

(h) in a case where the determination is being made for the purposes of section 269TJ and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.

(2) In determining, for the purposes of section 269TH or 269TK, whether material injury to a producer or manufacturer in a third country has been or is being caused or is threatened or would or might have been caused by reason of any circumstances in relation to the exportation of goods to Australia from another country (in this subsection called the **"country of export"**), the Minister may, without limiting the generality of that section, have regard to:

(a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and

(b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and

(c) any change or likely change, during a particular period, in the proportion that:

  (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or

  (ii) the quantity of goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold or consumed in Australia;

bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

(d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and

(e) the difference between:

  (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold in Australia; and

(ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and

(f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold in Australia; and

(g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.

(3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to a producer or manufacturer in a third country, in relation to goods of a particular kind exported to Australia is a reference to:

(a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer; and

(b) the degree of utilization of the capacity of the industry, producer or manufacturer to produce or manufacture goods of that kind, or like goods; and

(c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer:

(i) for which there are sales or forward orders; or

(ii) which are held as stocks; and

(d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer; and

(e) the level of profits earned in the industry, or by the producer or manufacturer, that are attributable to the production or manufacture of goods of that kind, or like goods; and

(f) the level of return on investment in the industry or in the business of the producer or manufacturer; and

(g) cash flow in the industry or in the business of the producer or manufacturer; and

(h) the number of persons employed, and the level of wages paid to persons employed, in the industry or by the producer or manufacturer in relation to the production or manufacture of goods of that kind, or like goods; and

(j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer; and

(k) the ability of persons engaged in the industry, or of the producer or manufacturer, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and

(m) investment in the industry or in the business of the producer or manufacturer.

Amount of subsidy may be determined by Minister for purposes of section 269TJ or 269TK

269TAF. Where the Minister is satisfied that it is inappropriate to ascertain the amount of a subsidy, bounty, reduction or remission of freight or other financial assistance referred to in subsection 269TJ (1) or (2) or 269TK (1) or (2) except in accordance with this section by reason that the Government of the country of export:

(a) has a monopoly, or substantial monopoly, of the trade of the country; or

(b) determines or substantially influences the domestic price of goods in that country;

the Minister may, for the purposes of section 269TJ or 269TK, as the case may be, determine the amount of that subsidy, bounty, reduction or remission of freight or other financial assistance, as the case may be, on the basis that the normal value of the goods is such value as is ascertained in accordance with subsection 269TAC (4).

Freight less than normal freight

269TAG. (1) Where the Minister is satisfied that, by reason of any circumstances, including the granting of rebates, refunds or other allowances, goods exported to Australia have been carried, whether within the country of export for the purpose of exporting the goods to Australia or from the country of export to Australia or both, freight free, or the amount of freight paid or payable in respect of the carriage of the goods is less than the normal freight in relation to the goods:

(a) the Minister is to be taken, for the purposes of section 269TJ or 269TK, to be satisfied that a reduction of freight has been granted upon the carriage of the goods; and

(b) where a special duty of Customs imposed by section 10 or 11 of the Anti-Dumping Act is chargeable on goods as to which the Minister is so satisfied, the Minister is to be taken, for the purposes of subsection 269TJ (8) or 269TK (3), to be satisfied that the amount of the reduction of freight that has been granted upon the carriage of the goods is an amount equal to:

(i) in the case of goods carried freight free—the amount of the normal freight in relation to the goods; and

(ii) in the case of other goods—the amount by which the normal freight in relation to the goods exceeds the amount or the net amount of the freight paid or payable in respect of the carriage of the goods.

(2) In this section:

"normal freight" , in relation to goods exported to Australia, means:

(a) the amount of freight that would have been payable in respect of the carriage of the goods within the country of export for the purpose of exporting the goods from that country to Australia if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates of freight (if any), at the time of that carriage, in respect of the carriage of like goods, and to any other matter that the Minister considers relevant; or

(b) the amount of freight that would have been payable in respect of the carriage of the goods from the country of export to Australia if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates of freight (if any), at the date of exportation of the goods, in respect of the carriage of like goods by sea or, if like goods are regularly carried by aircraft, by aircraft, and to any other matter that the Minister considers relevant; or

(c) the sum of the amount of freight referred to in paragraph (a) and the amount of freight referred to in paragraph (b);

as the case may be.

Ascertainment of equivalent amount in Australian currency

269TAH. (1) For the purposes of this Part, the equivalent amount in Australian currency of an amount in a currency other than Australian currency is to be ascertained in accordance with a fair rate of exchange at the appropriate date.

(2) For the purpose of this section, the Comptroller may, where he or she considers it desirable so to do for the avoidance of doubt, specify, by notice published in the *Gazette*, a means of ascertaining a rate that is to be deemed to be, or to have been, a fair rate of exchange in relation to a currency:

(a) on a date, or during a period, preceding the date of publication of the notice; or

(b) from and including 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 ascertained in relation to a currency under subsection (2) is, for the purpose of calculating the amount of duty payable on any goods exported on the date or during the period to which the rate so specified applies, the rate of exchange that applies for the purpose of subsection (1) in respect of the currency specified in the notice.

Revocation of notices

269TAJ. (1) The Minister may, by notice published in the *Gazette*, revoke a notice published by the Minister under this Part and must do so if satisfied that, were the notice not in force, the Minister would not be authorised by this Part to cause the notice to be published.

(2) The Minister may, by notice published in the *Gazette*, partly revoke a notice published by the Minister under this Part and must do so if satisfied that, if the notice had not applied to such goods, the Minister would not be authorised to cause a notice applying to such goods to be published.

(3) The Minister may, by notice in writing, release or partly release a person from an undertaking entered into under this Part.

(4) A notice of revocation under subsection (1) or of partial revocation under subsection (2) has effect from a date specified in the notice, which may be a date earlier than the date of publication of the notice of revocation or partial revocation in the *Gazette*.

(5) A notice releasing or partly releasing a person from an undertaking under subsection (3) has effect from a date specified in the notice, which may be a date earlier than the date on which the notice was signed by the Minister.

(6) Upon the revocation of a notice that declared that a section of the Anti-Dumping Act applies to goods, the special duty on the goods ceases to be payable, and shall not be charged or collected on goods entered for home consumption on or after the date of effect of the notice of revocation.

(7) Upon the partial revocation of a notice that declared that a section of the Anti-Dumping Act applies to goods, the special duty on the goods to which the notice no longer applies ceases to be payable, and shall not be charged or collected on such goods entered for home consumption on or after the date of effect of the partial revocation.

Minister may give directions to Comptroller in relation to powers and duties under this Part

269TA. (1) The Minister may give to the Comptroller such written directions in connection with carrying out or giving effect to the Comptroller's powers and duties under this Part as the Minister thinks fit, and the Comptroller shall comply with any directions so given.

(2) A direction under subsection (1) shall not deal with carrying out or giving effect to the powers or duties of the Comptroller in relation to a particular consignment of goods or to like goods to goods in a particular consignment but shall deal instead with the general principles for carrying out or giving effect to the Comptroller's powers.

(3) Where the Minister gives a direction to the Comptroller, the Minister shall:

(a) cause a written notice setting out particulars of the direction to be published in the *Gazette* as soon as practicable after giving the direction; and

(b) cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice in the *Gazette*.

(4) A notice setting out particulars of a direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 2—Consideration of anti-dumping matters by the Comptroller

Application for action under Anti-Dumping Act

269TB. (1) Where:

(a) a consignment of goods:

(i) has been imported into Australia;

(ii) is likely to be imported into Australia; or

(iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies;

(b) there is, or may be established, an Australian industry producing like goods; and

(c) a person believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

that person may, by application in writing lodged with the Comptroller, request that the Minister publish that notice in respect of the goods in the consignment.

(2) Where:

(a) a consignment of goods produced or manufactured in a country other than Australia:

(i) has been imported into Australia;

(ii) is likely to be imported into Australia; or

(iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies;

(b) there is, in a third country, a producer or manufacturer of like goods who exports such goods to Australia; and

(c) the Government of that third country believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

the Government of that third country may, by application in writing lodged with the Comptroller, request that the Minister publish that notice in respect of the goods in the consignment.

(3) An application under subsection (1) or (2) shall:

(a) be in accordance with an approved form;

(b) include such information relating to:

(i) the matters referred to in paragraphs (a) and (b) of that subsection; and

(ii) the matters which the applicant believes constitute reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice to which the application relates;

as is required by the form; and

(c) be signed and witnessed in the manner indicated in the form.

Consideration of application

269TC. **(1)** The Comptroller shall, before the expiration of a period of 55 days, or, if another period is prescribed by the regulations for the purpose, before the expiration of that other period, after lodgment of an application by a person under subsection 269TB (1) in respect of the goods the subject of the application, examine the application and, if the Comptroller is not satisfied:

(a) that the application complies with subsection 269TB (3); or

(b) that there is, or is likely to be established, an Australian industry in respect of like goods; or

(c) that the matters that are set out in the application as constituting reasonable grounds for the publication of the dumping duty notice or the countervailing duty notice in respect of the goods the subject of the application would, if established, constitute reasonable grounds for the publication of such a notice, or for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

(2) The Comptroller shall, before the expiration of a period of 55 days, or, if another period is prescribed by the regulations for the purpose, before the expiration of that other period, after lodgment of an application by the government of a country under subsection 269TB (2) in respect of the goods the subject of the application, examine the application and, if the Comptroller is not satisfied:

(a) that the application complies with subsection 269TB (3); or

(b) that there is a producer or manufacturer of like goods in that country who exports such goods to Australia; or

(c) that the matters that are set out in the application as constituting reasonable grounds for the publication of the dumping duty notice or the countervailing duty notice in respect of the goods the subject of the application would, if established, constitute reasonable grounds for the publication of such a notice, or for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

(3) Where, in accordance with subsection (1) or (2), the Comptroller rejects an application, the notice informing the applicant of that rejection:

(a) shall state the reasons why the Comptroller was not satisfied of one or more of the matters set out in that subsection; and

(b) shall inform the applicant of the applicant's right to refer the decision of the Comptroller in respect of the matters in respect of which the Comptroller was not so satisfied to the Authority for review.

(4) Where the Comptroller does not reject an application in respect of the goods the subject of the application made under subsection 269TB (1) or (2), the Comptroller shall publish a notice in the *Gazette* and in a newspaper circulating in each State and in the internal Territories:

(a) setting out particulars of those goods;

(b) setting out the identity of the applicant and:

(i) in the case of an application under subsection 269TB (1), the identity of the producer or producers; and

(ii) in the case of an application under subsection 269TB (2), the identity of the producer or manufacturer who exports like goods to Australia;

(c) stating that, within a specified period after the publication of the notice, being the period of 120 days or, if another period is prescribed by regulations for the purposes of this paragraph, that other period, the Comptroller will make a preliminary finding as to whether there are sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods;

(d) stating that a preliminary finding that there are or will be such grounds may result in the imposition of provisional measures including the taking of securities under section 42 of this Act for the period specified in subsection 45 (2) of this Act in respect of dumping duty or countervailing duty that may become payable on the importation of the goods the subject of the application; and

(e) inviting interested parties to lodge, within a specified period after publication of the notice, being a period of 40 days or, if a lesser period is indicated in the notice, that lesser period, submissions with the Comptroller, concerning the publication of the notices sought by the application;

and shall give a copy of that notice to the applicant.

Preliminary findings

269TD. **(1)** After the end of the period for lodging submissions in respect of an application for the imposition of dumping duty or countervailing duty but before the end of the period referred to in paragraph 269TC (4) (c), the Comptroller shall consider the application, taking into account any submissions received and any other matters that the Comptroller considers relevant.

(2) If, as a result of that consideration of the application, the Comptroller makes a preliminary finding that there are sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods:

(a) the Comptroller shall, by notice in writing published in the *Gazette* and in a newspaper circulating in each State and in the internal Territories, declare that he or she has made such a preliminary finding and give a copy of that notice to the applicant;

(b) the Comptroller shall, within 7 days of publication of that notice in the *Gazette*, refer the question whether the publication of the notice sought in the application is so justified to the Authority; and

(c) the Comptroller may, if he or she thinks it appropriate to do so, upon the importation of goods to which the application relates, require and take securities under section 42 of this Act in respect of any dumping duty or countervailing duty that may become payable.

(3) If, as a result of that consideration of the application, the Comptroller makes a preliminary finding that there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods, the Comptroller shall, by notice in writing published in the *Gazette* and in a newspaper circulating in each State and in the internal Territories, declare that he or she has made such a preliminary finding and give a copy of that notice to the applicant.

(4) A notice informing an applicant that the Comptroller has made a preliminary finding that there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods:

(a) shall state the reasons why the Comptroller has made such a preliminary finding; and

(b) shall inform the applicant of his or her right to refer the finding to the Authority for review of that finding.

Comptroller to have regard to same considerations as Minister in certain circumstances

269TE. (1) Where the Comptroller, in making a decision under section 269TC to accept or reject an application in relation to the goods the subject of the application or in making a preliminary finding under section 269TD in relation to those goods, is required to determine any matter ordinarily required to be determined by the Minister under the Anti-Dumping Act in respect of those goods, the Comptroller shall determine the matter in like manner as if he or she was the Minister and having regard to the same considerations as the considerations to which the Minister would be required, under that Act, to have regard if the Minister were determining the matter.

(2) Subsection (1) applies in respect of goods that have not, at the time of the Comptroller's determination of a matter in respect of those goods, been imported into Australia, as if the Comptroller's determination of the matter were being made after an importation of those goods into Australia, being an importation occurring at the time of the anticipated importation of those goods into Australia.

(3) Nothing in subsection (1) shall be taken to imply that the determination of a matter by the Comptroller affects the power of the Minister to make a final determination in respect of that matter for the purposes of the Anti-Dumping Act.

Reviews by Authority

269TF. (1) Application may be made to the Authority by a person who has lodged an application under section 269TB in a manner and form approved by the Authority for the purposes of this subsection, and within a period prescribed for the purposes of this subsection, for the review by the Authority of:

(a) a decision by the Comptroller under subsection 269TC (1) or (2) to reject the application so lodged; or

(b) a decision by the Comptroller under subsection 269TD (3) to the effect that there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods.

(2) Where the Authority decides to revoke the decision of the Comptroller under subsection 269TC (1) or (2) to reject an application and to substitute a decision accepting that application then, with effect from the day that the Authority so decides, this Act shall have effect as if the substituted decision were a decision of the Comptroller and, accordingly, the Comptroller shall publish a notice in the *Gazette* and in a newspaper as required under subsection 269TC (4).

(3) Where the Authority decides to revoke a preliminary finding of the Comptroller that under subsection 269TD (3) there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods and to substitute a preliminary finding that there are or will be such grounds then, with effect from the day the Authority so decides, this Act shall have effect as if the substituted finding were a preliminary finding of the Comptroller the making of which had been duly published in accordance with paragraph 269TD (2) (a), which had been duly referred to the Authority under paragraph 269TD (2) (b) and in respect of which the Comptroller may exercise the powers specified in paragraph 269TD (2) (c).

Division 3—Consideration of anti-dumping matters by the Minister

Dumping duties

269TG. (1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:

- (a) the amount of the export price of the goods is less than the amount of the normal value of those goods; and
- (b) because of that:
  - (i) material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered; or
  - (ii) in a case where security has been taken under section 42 in respect of any duty that may become payable on the goods under section 8 of the Anti-Dumping Act—material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;

the Minister may, by notice published in the *Gazette*, declare that section 8 of that Act applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind, that:

(a) the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and

(b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by notice published in the *Gazette* (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 8 of the Anti-Dumping Act applies to like goods:

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) the amount of the export price of which is less than the amount of their normal value.

(3) Where:

(a) a notice under subsection (1) declares particular goods to be goods to which section 8 of the Anti-Dumping Act applies; or

(b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;

the notice shall include a statement of the amount that the Minister has ascertained is or would be the normal value of the goods to which the declaration relates at the time of publication of the notice unless, in the opinion of the Minister, the inclusion of that statement would adversely affect the business or commercial interests of any person.

(4) Where the export of a consignment of goods to Australia by an exporter has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to like goods, the Minister may:

(a) give notice in writing to the exporter stating that:

(i) the Minister is of the opinion that it would be appropriate for the exporter to give an undertaking in accordance with paragraph (b); and

(ii) an undertaking in the terms set out in the notice may be satisfactory to the Minister; and

(b) whether or not a notice has been given to the exporter in accordance with paragraph (a), suspend indefinitely his or her consideration of the export of that consignment if he or she is given and accepts an undertaking by the exporter, in terms that are satisfactory to the Minister, that the exporter will so conduct future export trade to Australia in like goods as to avoid causing or threatening material injury to an Australian industry producing like goods or hindering the establishment of such an Australian industry.

(5) Where the export of a consignment of goods to Australia has been under consideration by the Minister as referred to in subsection (4) and the Minister accepts an undertaking under that subsection in respect of like goods, the Minister must, as soon as practicable after accepting that undertaking, publish in the *Gazette* particulars of:

(a) the goods in respect of which the undertaking was accepted; and

(b) the price below which, in accordance with the terms of the undertaking, the goods will not be sold in Australia;

unless, in the opinion of the Minister, the publication of those particulars would adversely affect the business or commercial interests of any person.

Third country dumping duties

269TH. (1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:

(a) the amount of the export price of the goods is less than the amount of the normal value of the goods; and

(b) because of that:

(i) material injury to a producer or manufacturer in a third country of like goods has been or is being caused or is threatened; or

(ii) in a case where security has been taken under section 42 in respect of any duty that may become payable on the goods under section 9 of the Anti-Dumping Act—material injury to a producer or manufacturer in a third country of like goods would or might have been caused if the security had not been taken;

the Minister, if requested by the Government of the third country so to do, may, by notice published in the *Gazette*, declare that section 9 of that Act applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that:

(a) the amount of the export price of like goods so produced or manufactured that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods so produced or manufactured that may be exported to Australia in the future may be less than the normal value of the goods; and

(b) because of that, material injury to a producer or manufacturer in a third country of like goods has been or is being caused or is threatened;

the Minister, if requested by the Government of the third country so to do, may, by notice published in the *Gazette* (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods so manufactured or produced that have been exported to Australia), declare that section 9 of the Anti-Dumping Act applies to like goods so produced or manufactured:

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) the amount of the export price of which is less than the amount of their normal value.

(3) Where:

(a) a notice under subsection (1) declares particular goods to be goods to which section 9 of the Anti-Dumping Act applies; or

(b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;

the notice shall include a statement of the amount that the Minister has ascertained is or would be the normal value of the goods to which the declaration relates at the time of publication of the notice unless, in the opinion of the Minister, the inclusion of that statement would adversely affect the business or commercial interests of any person.

Countervailing duties

269TJ. **(1)** Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:

(a) in the country of origin or the country of export of the goods, there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of those goods a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(b) because of that:

(i) material injury to an Australian industry producing like goods has been or is being caused or is threatened or the establishment of an Australian industry producing like goods has been or may be materially hindered; or

(ii) in a case where security has been taken under section 42 in respect of any duty that may become payable on the goods under section 10 of the Anti-Dumping Act—material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;

the Minister may, by notice published in the *Gazette*, declare that section 10 of that Act applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind that:

(a) there has been paid or granted, directly or indirectly upon the production, manufacture, carriage or export of like goods that have already been exported to Australia, and there may be paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of like goods that may be exported to Australia in the future, a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is being threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by notice published in the *Gazette* (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 10 of the Anti-Dumping Act applies to like goods:

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) on the production, manufacture, carriage or export of which a subsidy, bounty, reduction or remission of freight or other financial assistance is paid or granted.

(3) Where the export of a consignment of goods to Australia has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to like goods, the Minister may:

(a) give notice in writing 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 stating that:
   (i) the Minister is of the opinion that it would be appropriate for the Government or exporter to whom the notice is given to give an undertaking in accordance with paragraph (b); and
   (ii) an undertaking in the terms set out in the notice may be satisfactory to the Minister; and
(b) whether or not a notice has been given to the Government of the country of origin, or of the country of export, or to the exporter in accordance with paragraph (a), suspend indefinitely his or her consideration of the export of that consignment if he or she is given and accepts:
   (i) an undertaking by the Government of the country of origin, or of the country of export, of the goods in the consignment, in terms that are satisfactory to the Minister, that that Government will, in relation to any future export trade to Australia in like goods, review any financial assistance by that Government and make any changes that may be found to be necessary to avoid causing or threatening material injury to an Australian industry producing like goods or hindering the establishment of such an Australian industry; or
   (ii) an undertaking by the exporter of the goods in the consignment, in terms that are satisfactory to the Minister, that the exporter will so conduct his or her future export trade to Australia in like goods as to avoid causing or threatening material injury to an Australian industry producing like goods or hindering the establishment of such an Australian industry.

(4) Where the Minister is satisfied that:
(a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties; and
(b) those duties are imposed because it is alleged that there is paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of goods of that kind a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(c) those duties are imposed without regard to, or without proper regard to, whether or not material injury to an industry in that country producing like goods has been or is being caused or is threatened, or the establishment of such an industry in that country has been or may be materially hindered, by reason of the payment or grant of that subsidy, bounty, reduction or remission of freight or other financial assistance;

the Minister may, by notice published in the *Gazette*, declare that section 10 of the Anti-Dumping Act applies to goods specified in the notice:

(d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and

(e) upon the production, manufacture, carriage or export of which there is paid or granted, directly or indirectly, a subsidy, bounty, reduction or remission of freight or other financial assistance.

(5) Where the Minister is satisfied that:

(a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties; and

(b) those duties are imposed because it is alleged that:

(i) prescribed assistance is paid or granted, directly or indirectly, in relation to goods of that kind that are exported from Australia to that country; and

(ii) material injury to an industry in that country producing like goods has been or is being caused or is threatened, or the establishment of such an industry in that country has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance; and

(c) prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed has been paid or granted in relation to goods exported from that country to Australia and material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of such an Australian industry has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance;

the Minister may, by notice published in the *Gazette*, declare that section 10 of the Anti-Dumping Act applies to goods specified in the notice, being goods of a kind mentioned in paragraph (c):

(d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and

(e) in relation to which there is paid or granted prescribed assistance of a kind specified in the notice, being prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed.

(6) Where the Minister is satisfied that:

(a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties; and

(b) those duties are imposed because it is alleged that prescribed assistance is paid or granted, directly or indirectly, in relation to goods of that kind that are exported from Australia to that country; and

(c) those duties are imposed without regard to, or without proper regard to, whether or not material injury to an industry in that country producing like goods has been or is being caused or is threatened, or the establishment of such an industry in that country has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance;

the Minister may, by notice published in the *Gazette*, declare that section 10 of the Anti-Dumping Act applies to goods specified in the notice:

(d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and

(e) in relation to which there is paid or granted prescribed assistance of a kind specified in the notice, being prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed.

(7) A reference in this section to prescribed assistance in relation to goods is a reference to any assistance, incentive, exemption, privilege or benefit (whether financial or otherwise) in relation to goods other than the payment or grant of a subsidy, bounty, reduction or remission of freight or other financial assistance on the production, manufacture, carriage or export of the goods.

(8) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the amount of any subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods to be ascertained for the purpose of this section, that amount is to be taken to be such amount as is determined by the Minister having regard to all relevant information.

(9) If the Minister is satisfied that adequate information as to the amount, cost or value of the prescribed assistance in relation to goods cannot be obtained for the purposes of this section, the amount, cost or value of that prescribed assistance is to be taken to be such amount, cost or value as is determined, in writing, by the Minister.

(10) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales is to be taken to be financial assistance paid to that exporter.

Third country countervailing duties

269TK. (1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:

(a) in the country of origin or the country of export of the goods, there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of those goods a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(b) because of that:

(i) material injury to a producer or manufacturer in a third country of like goods has been or is being caused or is being threatened; or

(ii) in a case where security has been taken under section 42 in respect of any duty that may become payable on the goods under this section—material injury to a producer or manufacturer in a third country of like goods would or might have been caused if the security had not been taken;

the Minister, if requested by the Government of the third country so to do, may, by notice published in the *Gazette*, declare that section 11 if the Anti-Dumping Act applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that:

(a) there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of like goods that have already been exported to Australia, and there may be paid or granted directly or indirectly, upon the production, manufacture, carriage or export of like goods that may be exported to Australia in the future, a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(b) by reason thereof material injury to a producer or manufacturer in a third country of like goods has been or is being caused or is being threatened;

the Minister, if requested by the Government of the third country so to do, may, by notice published in the *Gazette* (whether or not he or she has made, or makes, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 11 of the Anti-Dumping Act applies to like goods:

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) on the production, manufacture, carriage or export of which a subsidy, bounty, reduction or remission of freight or other financial assistance is paid or granted.

(3) If the Minister is satisfied that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods cannot be obtained for the purposes of this section, the amount of subsidy, bounty, reduction or remission of freight or other financial assistance is to be taken to be such amount as is determined, in writing, by the Minister.

(4) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales is to be taken to be financial assistance paid to the exporter.

Minister to give notice of decision not to impose duty

269TL. Where the Minister receives a recommendation from the Anti-Dumping Authority concerning the imposition of dumping duty, third country dumping duty, countervailing duty or third country countervailing duty on particular goods or on goods of a like kind to particular goods and the Minister decides, after having regard to that recommendation, not to declare those goods to be goods to which section 8, 9, 10 or 11, as the case requires, of the Anti-Dumping Act applies, the Minister shall, by notice published in the *Gazette*, state that he or she has so decided.

Period during which certain notices and undertakings to remain in force

269TM. (1) Where a notice is published after the commencement of this section under a relevant notification provision in respect of goods of a particular kind, that notice expires, unless sooner revoked:

(a) if, at the time of publication of the first-mentioned notice, no previous notice relating to like goods is in force under a relevant notification provision and no previous undertaking relating to like goods is in force under a relevant undertaking provision—3 years after the date on which the first-mentioned notice is published; and

(b) if, at the time of publication of the first-mentioned notice, a previous notice relating to like goods is in force under the relevant notification provision or a previous undertaking relating to like goods is in force under a relevant undertaking provision—3 years after the date on which that notice or undertaking, or, if there is more than one previous notice or undertaking, the first such notice or undertaking, was published or entered into, as the case requires.

(2) Where an undertaking is entered into after the commencement of this section under a relevant undertaking provision in respect of goods of a particular kind, that undertaking expires, unless provision is made for its earlier expiration:

(a) if, at the time when the first-mentioned undertaking was entered into, no previous undertaking relating to like goods is in force under a relevant undertaking provision and no previous notice relating to like goods is in force under a relevant notification provision—3 years after the date that first-mentioned undertaking was entered into; and

(b) if, at the time when that first-mentioned undertaking is entered into, a previous undertaking relating to like goods is in force under a relevant undertaking provision or a previous notice relating to like goods is in force under a relevant notification provision—3 years after the date on which that previous undertaking or notice, or, if there is more than one such undertaking or notice, the first such undertaking or notice, was entered into or published, as the case requires.

(3) In subsections (1) and (2):

(a) a reference to a previous notice in relation to particular goods shall be taken to include a reference to a notice published before the commencement of this section; and

(b) a reference to a previous undertaking shall be taken to include a reference to an undertaking entered into before the commencement of this section.

(4) A notice originally published in the *Gazette* on or after 1 March 1986 and before 1 September 1988 under the Anti-Dumping Act, being a notice that is to be treated, on and after the commencement of section 9 of the *Customs Tariff (Anti-Dumping) Amendment Act 1989*, by virtue of the operation of that section, as having been published under a relevant notification provision, is to be taken to have expired, unless sooner revoked, 3 years after the date of its original publication.

(5) An undertaking originally entered into on or after 1 March 1986 and before 1 September 1988 under the Anti-Dumping Act, being an undertaking that is to be treated, on and after the commencement of section 9 of the *Customs Tariff (Anti-Dumping) Amendment Act 1989*, by virtue of the operation of that section, as having been entered into under a relevant undertaking provision, is to be taken to have expired, unless sooner released, 3 years after it was originally entered into.

(6) Nothing in this section shall be taken to imply that the Minister may not publish a notice under a relevant notification provision in respect of goods of a particular kind or enter into an undertaking in respect of goods of a particular kind upon the expiration of all previous notices published under a relevant notification provision in respect of like goods and of all previous undertakings entered into under a relevant undertaking provision in respect of like goods.

(7) In this section:

"relevant notification provision" means subsection 269TG (2), 269TH (2), 269TJ (2), (4), (5) or (6) or 269TK (2);

"relevant undertaking provision" means subsection 269TG (4) or 269TJ (3).

Retrospective notices

269TN. (1) Subject to this section, the Minister must not cause a notice to be published under subsection 269TG (1), 269TH (1), 269TJ (1) or 269TK (1) in respect of goods that have been entered for home consumption.

(2) Subsection (1) does not prevent the publication of a notice under subsection 269TG (1), 269TH (1), 269TJ (1) or 269TK (1) in respect of goods that have been entered for home consumption in relation to which security has been taken under section 42 in respect of any duty that might become payable under section 8, 9, 10 or 11 of the Anti-Dumping Act, as the case may be (not being security that has been cancelled), by reason of the publication of such a notice or in relation to which the Customs had the right to require and take such security (not being security that would have been cancelled under this Act if it had been taken).

(3) Subsection (1) does not prevent the publication of a notice under subsection 269TG (1) in respect of goods that have been entered for home consumption to which, by virtue of subsection (4) of this section, this subsection applies, if:

(a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in respect of any duty that might be payable on goods of the same kind under section 8 of the Anti-Dumping Act or, within that period, the Customs had the right to require and take such security; and

(b) material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind, being injury arising by reason of the amount of the export price of the goods exported being less than the amount of the normal value of the goods exported, and the Minister considers that the publication of the notice is necessary to prevent the recurrence of the injury.

(4) Subsection (3) applies to goods:

(a) that have been imported into Australia by an importer who knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and that by reason thereof material injury would be caused to an Australian industry; or

(b) that are goods of a kind the exportation of which to Australia on a number of occasions has caused, or, but for the publication of a notice under section 269TG in respect of goods of that kind, would have caused, material injury to an Australian industry by reason of the amount of the export price of the goods exported being less than the normal value of the goods exported.

(5) Subsection (1) does not prevent the publication of a notice under subsection 269TJ (1) in respect of goods that have been entered for home consumption if:

(a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in respect of any duty that might be payable on goods of the same kind under section 10 of the Anti-Dumping Act or, within that period, the Customs had the right to require and take such security; and

(b) material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind, being injury arising by reason that, in the country of origin or the country of export of the goods, there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods a subsidy, bounty, reduction or remission of freight or other financial assistance (including financial assistance of the kind referred to in subsection 269TJ (10)).

(6) Where:

(a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with subsection 269TG (4) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any duty that might be payable under section 8 of the Anti-Dumping Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TG (1) of this Act in respect of goods that:

(c) have been exported by the exporter;

(d) are of the kind to which the undertaking relates; and

(e) have been entered for home consumption on a day that:

(i) was not earlier than the day on which that act or omission occurred; and

(ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(7) Where:

(a) the Minister is satisfied that an act or omission of the Government of a country that has given an undertaking in accordance with subsection 269TJ (3) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any duty that might be payable under section 10 of the Anti-Dumping Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TJ (1) in respect of goods that:

(c) are the produce or manufacture of that country or have been exported from that country, as the case may be; and

(d) are of the kind to which the undertaking relates; and

(e) have been entered for home consumption on a day that:

(i) was not earlier than the day on which that act or omission occurred; and

(ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(8) Where:

(a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with subsection 269TJ (3) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any duty that might be payable under section 10 of the Anti-Dumping Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TJ (1) in respect of goods that:

(c) have been exported by the exporter; and

(d) are of the kind to which the undertaking relates; and

(e) have been entered for home consumption on a day that:

(i) was not earlier than the day on which that act or omission occurred; and

(ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

Power to specify goods

269TP. A notice under subsection 269TG (2), 269TH (2), 269TJ (2) or 269TK (2) in respect of a kind of goods, may, without limiting the generality of those provisions be expressed to apply to:

(a) goods of that kind exported from a particular country; or

(b) goods of that kind exported by a particular exporter.

Inquiries in relation to undertakings

269U. (1) Where the Minister is considering, in relation to goods the subject of an application under section 269TB:

(a) whether to give a notice, in accordance with paragraph 269TG (4) (a), to the exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry; or

(b) whether to give a notice, in accordance with paragraph 269TJ (3) (a), to the Government of the country of origin, or of the country of export, of the goods in the consignment or to the exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry;

the Comptroller may authorize an officer in writing to convene a meeting of representatives of the Australian industry for the purpose of obtaining information and submissions from those representatives in relation to the question what terms of undertaking should be set out in the notice, if it is to be given, as the terms that may be satisfactory to the Minister.

(2) An officer authorized under subsection (1) to convene a meeting of representatives of an Australian industry shall give notice in writing to such persons as, in his opinion, represent the Australian industry, setting out:

(a) the day, time and place for the convening of the meeting; and

(b) the question to be considered by the meeting.

(3) The officer convening a meeting in pursuance of subsection (2):

(a) shall preside at the meeting; and

(b) may adjourn the meeting from time to time.

(4) At a meeting of representatives of an Australian industry convened in pursuance of subsection (2), the representatives attending the meeting may provide information, or make submissions, to the officer convening the meeting in relation to the question being considered by the meeting.

(5) Nothing in subsection (4) shall be taken to prevent a representative of an Australian industry who attends a meeting convened in pursuance of subsection (2) from providing information or making a submission, in relation to the question considered or to be considered at the meeting, to the officer convening the meeting otherwise than at the meeting or to the Minister.

(6) The officer convening a meeting in pursuance of subsection (2) may, subject to subsection (7), put before the meeting information in relation to the question being considered by the meeting.

(7) The officer convening a meeting in pursuance of subsection (2) shall not put before the meeting any information provided to him by another person that is information of a confidential nature (whether or not confidentiality was claimed in respect of the information by the person who provided the information).

(8) After the close of a meeting convened in pursuance of subsection (2), the officer convening the meeting shall furnish to the Comptroller for submission to the Minister a report in writing of the information provided and the submissions made at the meeting.

(9) Nothing in this section shall be taken, for the purposes of subsection 51 (1) of the *Trade Practices Act 1974*, to authorize any act or thing other than the providing of information or the making of a submission, at a meeting of representatives of an Australian industry convened in pursuance of subsection (2), by a representative of the Australian industry to the officer convening the meeting in relation to the question being considered by the meeting.

PART XVI—REGULATIONS AND BY-LAWS

Regulations

270. (1) The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Customs, and in particular for prescribing:

(a) the nature, size, and material of the packages in which imported goods or goods for export, or goods for conveyance coastwise from any State to any other State, are to be packed, or the coverings in which they are to be wrapped;

(b) the maximum or minimum weight or quantity of imported goods, or goods for export, or goods for conveyance coastwise from any State to any other State which may be contained in any one package;

(d) the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export; and

(e) the conditions of carriage of goods subject to the control of the Customs, and the obligations of persons accepting such goods for carriage.

(2) The regulations may prescribe penalties not exceeding $1,000 in respect of any contravention of any of the regulations.

(3) The power to make regulations for the purposes of the definition of **"airport shop goods"** in subsection 4 (1) extends to making regulations that:

(a) declare local use goods to be airport shop goods for the purposes of section 96B; or

(b) declare a class of local use goods, or a class of goods that includes local use goods, to be a class of airport shop goods for the purposes of that section.

(3A) Where, in any regulations made for the purposes of this Act, reference is made to the document known as the Australian Harmonized Export Commodity Classification published by the Australian Bureau of Statistics, that reference shall, unless the contrary intention appears in those regulations, be read as a reference to that document as so published and as in force from time to time.

(4) The power to make regulations for the purposes of paragraph 96B (3) (b) or (c) extends to making regulations that prescribe quantities in relation to airport shop goods that are local use goods.

(5) In subsections (3) and (4), **"local use goods"** means goods:

(a) that have not been, and are not proposed to be, imported into Australia; and

(b) that have not been, and are not proposed to be, exported from Australia.

Comptroller 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 Comptroller 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 Comptroller 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 Comptroller may determine, by instrument in writing, that, subject to the conditions, if any, specified in the determination, an item, or a proposed item, of a Customs Tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-laws shall apply, or shall be deemed to have applied, to the particular goods specified in the determination.

(2) The Comptroller may make a determination under the last preceding subsection for the purposes of an item, or a proposed item, of a Customs Tariff whether or not he has made a by-law for the purposes of that item or proposed item.

(3) Where, under this section, the Comptroller 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 Comptroller may make a by-law or determination for the purposes of an item of a Customs Tariff notwithstanding that the item has been repealed before the making of the by-law or determination, but the by-law shall not apply to, and the determination shall not be made in respect of, goods entered for home consumption after the repeal of that item.

Publication of by-laws and notification of determinations

273B. **(1)** A by-law made under this Part:

(a) shall be published in the *Gazette*, and has no force until so published;

(b) shall, subject to this Part:

  (i) take effect, or be deemed to have taken effect, from the date of publication, or from a date (whether before or after the date of publication) specified by or under the by-law; or

  (ii) have effect or be deemed to have had effect, for such period (whether before or after the date of publication) as is specified by or under the by-law; and

(c) shall not be deemed to be a Statutory Rule within the meaning of the *Rules Publication Act 1903-1939*.

(2) Notice of the making of a determination under this Part shall be published in the *Gazette* as soon as practicable after the making of the determination and the notice shall specify:

(a) the kind of goods to which the determination applies;

(b) the conditions, if any, specified in the determination; and

(c) the item or proposed item for the purposes of which the determination was made.

Retrospective by-laws and determinations not to increase duty

273C. This Part does not authorize the making of a by-law or determination which has the effect of imposing duty, in relation to goods entered for home consumption before the date on which the by-law is published in the *Gazette* or the determination is made, as the case may be, at a rate higher than the rate of duty payable in respect of those goods on the day on which those goods were entered for home consumption.

By-laws and determinations for purposes of proposals

273D. Where:

(a) a by-law or determination is made for the purposes of a Customs Tariff proposed in the Parliament or of a Customs Tariff as proposed to be altered by a Customs Tariff alteration proposed in the Parliament; and

(b) the proposed Customs Tariff becomes a Customs Tariff or the proposed alteration is made, as the case may be;

the by-law or determination shall have effect for the purposes of that Customs Tariff or of that Customs Tariff as so altered, as the case may be, as if the by-law or determination had been made for those purposes and the proposed Customs Tariff or the Customs Tariff as proposed to be altered, as the case may be, had been in force on the day on which the by-law or the determination was made.

Notification of proposals when House of Representatives is not sitting

273EA. **(1)** The Minister may, at any time when the Parliament is prorogued or the House of Representatives has expired by effluxion of time, has been dissolved or is adjourned otherwise than for a period not exceeding 7 days, publish in the *Gazette* a notice that it is intended, within 7 sitting days of the House of Representatives after the date of the publication of the notice, to propose in the Parliament a Customs Tariff or Customs Tariff alteration in accordance with particulars specified in the notice and operating as from such time as is specified in the notice, not being:

(a) in the case of a Customs Tariff or Customs Tariff alteration that could have the effect of making the duty payable by any person importing goods greater than the duty that would, but for that Customs Tariff or Customs Tariff alteration, be payable—a time earlier than the time of publication of the notice; or

(b) in any other case—a time earlier than 6 months before the time of publication of the notice.

(2) Where notice of intention to propose a Customs Tariff or a Customs Tariff alteration has been published in accordance with this section, the Customs Tariff or Customs Tariff alteration shall, for the purposes of this Act (other than section 226) and any other Act, be deemed to be a Customs Tariff or Customs Tariff alteration, as the case may be, proposed in the Parliament.

Interpretation

273F. (1) In this Part:

"proposed item of a Customs Tariff" means:

(a) an item of a Customs Tariff proposed in the Parliament; or

(b) an item of a Customs Tariff as proposed to be altered by a Customs Tariff alteration proposed in the Parliament.

(2) Unless the contrary intention appears, a reference in this Part to an item of a Customs Tariff includes a reference to:

(a) a heading and a subheading in Schedule 3 to the *Customs Tariff Act 1987*; and

(b) a subitem of an item in Schedule 5 to that Act.

PART XVII—MISCELLANEOUS

Briefing of Leader of Opposition on certain matters

273G. The Minister shall, from time to time, and not less frequently than once each year, arrange for the Leader of the Opposition in the House of Representatives to be briefed on matters relating to contraventions of this Act in respect of narcotic substances.

Notices

273GAA. (1) Where a person makes a decision to which subsection (2) applies in relation to a warehouse licence or an agents licence, the person shall cause to be served, either personally or by post, on the applicant or the holder of the licence, as the case requires, a notice in writing setting out the decision.

(2) For the purposes of subsection (1), the following decisions are decisions to which this subsection applies:

(a) a decision under Part V refusing to grant a warehouse licence;

(b) a decision under subsection 82 (5) refusing to vary the conditions specified in a warehouse licence;

(c) a decision under subsection 84 (3) refusing to renew a warehouse licence;

(d) a decision under Division 3 of Part XI refusing to grant an agents licence;

(e) a decision under subsection 183CF (1) or (2) refusing to vary the endorsements on an agents licence;

(f) a decision under subsection 183CG (7) refusing to vary the conditions specified in an agents licence.

(3) Where a Collector makes:

(a) a decision under section 95 refusing to cancel a valuation of warehoused goods and to revalue the goods; or

(b) a decision under subsection 97 (1) refusing to grant permission to the owner of warehoused goods;

the Collector shall cause to be served, either personally or by post, on the owner of the goods, a notice in writing setting out the decision.

(4) Where the Minister makes a decision under subsection 119 (2) not to grant a Certificate of Clearance, he shall cause to be served, either personally or by post, on the applicant for the Certificate, a notice in writing setting out the decision.

(5) Where a Collector makes a decision under section 126 refusing to allow the export of goods by a person, he shall cause to be served, either personally or by post, a notice in writing setting out the decision on the person.

(6) Where a Collector makes a decision under section 164 refusing to pay a rebate, he shall cause to be served, either personally or by post, on the applicant for the rebate, a notice in writing setting out the decision.

(7) A notice in accordance with section 86 to the holder of a warehouse licence shall state the ground or grounds on which the notice is given.

(8) A notice under subsection 87 (2) of the cancellation by the Comptroller of a warehouse licence shall set out the Comptroller's findings on material questions of fact, refer to the evidence or other material on which those findings were based and give the reasons for the cancellation.

(9) A notice under subsection 183CS (1) shall set out the ground or grounds of the decision of the Minister to which the notice relates.

(10) A reference in this section to a notice in writing setting out the decision of a person is a reference to a notice in writing setting out the decision and the person's findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

Review of decisions

273GA. (1) Subject to this section, applications may be made to the Administrative Appeals Tribunal for review of:

(aa) a determination by the Comptroller for the purposes of sub-section 28 (2);

(ab) a determination by the Comptroller for the purposes of sub-section 28 (3);

(a) a decision of a Collector under section 35A making a demand;

(aaa) a decision by the Comptroller for the purposes of paragraph 58A (6) (c) refusing to authorise a journey;

(b) a decision of the Comptroller or a Collector for the purposes of Part V;

(c) a decision by the Comptroller under section 119 not to grant a Certificate of Clearance;

(d) a decision by a Collector under section 126 refusing to allow the export of goods;

(e) a decision of the Comptroller under section 132B making a quota order;

(f) a decision of the Comptroller under section 132C varying a quota order;

(g) a decision of the Collector under section 151A;

(h) a decision of the Comptroller under subsection 161J (2) specifying a rate of exchange;

(ha) a decision of a Collector under section 164 refusing to pay a rebate;

(haa) a decision of a Collector under subsection 164 (2) demanding the repayment of rebate;

(hb) a decision of a Collector for the purposes of subsection 164 (4C);

(j) a decision of the Comptroller under section 164B;

(ja) a decision of the Comptroller under subsection 165 (3) demanding repayment of the whole or a part of a rebate of duty;

(k) a decision of the Minister, the Comptroller, or a Collector for the purposes of Part XI;

(ka) a decision of the Comptroller under subsection 243U (1):

(i) not to remit a penalty payable under section 243T in respect of duty payable on goods; or

(ii) to remit part only of such a penalty;

(m) a decision by the Comptroller to specify a date in a Commercial Tariff Concession Order by virtue of subsection 269N (4); and

(n) a decision by the Comptroller not to specify a date in a Commercial Tariff Concession Order by virtue of subsection 269N (4) where an application in relation to the order has been made under subsection 269N (5).

(2) Where a dispute referred to in subsection 167 (1) has arisen and the owner of the goods has, in accordance with that subsection, paid under protest the sum demanded by the Collector, an application may be made to the Tribunal for review of the decision to make that demand and of any other decision forming part of the process of making, or leading up to the making of, that first-mentioned decision.

(3) Subsection 119 (3) does not apply where a Certificate of Clearance is granted to the ship or aircraft referred to in that subsection as a result of a review by the Tribunal.

(5) An application may not be made to the Tribunal under subsection (2) unless the application is made within the time specified in paragraph 167 (4) (a) or (b), whichever is appropriate.

(6) Where the owner of goods has made an application to the Tribunal under subsection (2), he is not entitled to bring an action under subsection 167 (2).

(7) Where, on an application made under subsection (2), the Tribunal has made a decision reviewing a demand made by the Collector, the proper duty payable in respect of the goods concerned shall be deemed to be:

(a) the sum determined to be the proper duty by, or ascertained to be the proper duty in accordance with:

   (i) the decision of the Tribunal; or

   (ii) an order of a court on appeal from that decision; or

(b) the sum paid under protest;

whichever is the less.

(8) In this section, **"decision"** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Review of decisions under Customs Tariff Act

273H. **(1)** Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Minister or the Comptroller under section 13 of the *Customs Tariff Act 1987*.

(2) In subsection (1), **"decision"** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Review of decisions under Customs Tariff (Coal Export Duty) Act

273J. **(1)** Applications may be made to the Administrative Appeals Tribunal for review of decisions of a Collector made for the purposes of the definition of **"high quality coking coal"** in section 4 of the *Customs Tariff (Coal Export Duty) Act 1975* or for the purposes of section 7 of that Act and for review of decisions of the Minister for Resources and Energy made for the purposes of section 8 of that Act.

(2) In subsection (1), **"decision"** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Review of decisions relating to Customs Tariff (Stand-By Duty) Act

273JA. **(1)** Applications may be made to the Administrative Appeals Tribunal for review of:

(a) a decision of the Minister for Resources and Energy that he or she is satisfied, or not satisfied, of a matter for the purposes of the definition of **"list of eligible importers"** in subsection 4 (1) of the *Customs Tariff (Stand-By Duty) Act 1985*;

(b) a decision of that Minister under paragraph 10 (1) (b) of that Act that he or she is satisfied, or not satisfied, of a matter; or

(c) a decision of that Minister under paragraph 11 (1) (b) of that Act that he or she is satisfied, or not satisfied, of a matter.

(2) In this section, **"decision"** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Statement to accompany notification of decisions

273K. **(1)** Where notice in writing of the making of a decision of a kind referred to in subsection 273GA (1) or (2) or section 273H or subsection 273J (1) or 273JA (1) is given to a person whose interests are affected by the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of the person or persons whose interests are affected by the decision.

(2) Any failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

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 an authorised officer so to do:

(a) deliver an account in writing of the quantity of such goods, the marks and numbers thereof, and names of the shippers and consignees, and declare to the truth thereof;

(b) answer questions relating to such goods.

Commissioned ships and aircraft may be searched

275. Ships or aircraft under commission from His Majesty or any foreign State having on board any goods other than ship's or aircraft's stores laden in parts beyond the seas or in Australia may be boarded and searched by the Comptroller or an authorised officer in the same manner as other ships or aircraft, and the Comptroller or the authorised officer may secure any such goods and for that purpose bring them ashore.

Direction not to move a ship or aircraft from a boarding station

275A. (1) Where a Collector considers that it is desirable, for the purposes of the Customs, to hold a ship or aircraft at a boarding station, the Collector may, by notice in writing delivered to the master of the ship or the pilot of the aircraft before it leaves the boarding station, direct the master or pilot not to move the ship or aircraft from the boarding station until the master or pilot receives permission, in writing, from a Collector to do so.

(2) A person shall not disobey a direction given to him, and in force, under this section.

Penalty: $10,000.

(3) Where a direction not to move a ship or aircraft from a boarding station has been given under subsection (1):

(a) the direction ceases to have any force or effect at the expiration of a period of 3 days after the day on which the direction is given; and

(b) no further direction in respect of the ship or aircraft shall be given while the ship or aircraft remains at the boarding station.

(4) Where a Collector (not being the Comptroller or the Collector of Customs for a State or Territory) gives a direction under subsection (1) not to move a ship or aircraft from a boarding station, the Collector shall forthwith notify:

(a) where the boarding station is in the Australian Capital Territory—the Comptroller;

(b) where the boarding station is in a State—the Collector of Customs for the State; or

(c) where the boarding station is in the Northern Territory—the Collector of Customs for the Northern Territory;

of the giving of the direction.

(5) Where:

(a) a ship or aircraft is held at a boarding station by virtue of a direction given under subsection (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 subsection that he is satisfied that, up to the time the offence is alleged to have been committed:

(a) the permission referred to in the direction had not been given; and

(b) the direction had not been revoked;

is evidence of the matters as to which the person has certified that he is satisfied.

Collector's sales

276. As to sales by the Collector:

(a) The goods shall be sold by auction or by tender and after such public notice as may be prescribed, and where not prescribed after reasonable public notice.

(b) The goods may be sold either subject to duty and charges or at a price that includes duty and charges and the price shall be paid in cash on the acceptance of the bidding or tender.

(c) No bidding or tender shall be necessarily accepted and the goods may be re-offered until sold at a price satisfactory to the Collector.

Proceeds of sales

277. (1) The proceeds of any goods sold by the Collector shall be applied as follows:

Firstly, in the payment of the expenses of the sale.

Secondly, where the price for the goods includes duty, in payment of the duty.

Thirdly, in payment of the warehouse rent and charges.

Fourthly, in payment of the harbour and wharfage dues and freight if any due upon the goods if written notice of such harbour and wharfage dues and freight shall have been given to the Collector.

And the balance if any shall be paid to the Minister for Finance on account of the person entitled thereto.

(2) For the purposes of section 132, goods to which subsection (1) of this section applies on which duty has not been paid shall be taken to have been entered for home consumption on the day on which the goods are sold by the Collector.

Jurisdiction of courts

277A. (1) A provision of the *Judiciary Act 1903* by which a court of a State is invested with federal jurisdiction has effect, in relation to matters arising under this Act, as if that jurisdiction were so invested without limitation as to locality other than the limitation imposed by section 80 of the Constitution.

(2) Subject to the Constitution, jurisdiction is conferred on the several courts of the Territories, within the limits of their several jurisdictions, other than limits as to locality, with respect to matters arising under this Act.

(3) The trial of an offence against a provision of this Act not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

Examination of goods

278. The right of a person under this Act to examine goods includes the right to count, measure, weigh or gauge the goods.

SCHEDULES

SCHEDULE I

THE COMMONWEALTH OF AUSTRALIA

Security to the Customs

By this Security the subscribers are, pursuant to the *Customs Act 1901*, bound to the Customs of the Commonwealth of Australia in the sum of—[*here insert amount or mode of ascertaining amount intended to be paid in default of compliance with condition*]—subject only to this condition that if—[*here insert the condition of the security*]—then this security shall be thereby discharged.*

Dated the day of 19 .

Names and descriptions of subscribers	Signatures of subscribers	Signatures of witnesses

*NOTE—If liability is not intended to be joint and several and for the full amount, here state what is intended as, for example, thus—"The liability of the subscribers is joint only," or "the liability of (mentioning subscriber) is limited to (here state amount of limit of liability or mode of ascertaining limit)."

SCHEDULE 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
Amphecloral	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
Etoxeridine	5.0

SCHEDULE VI—continued

Column 1 Name of substance	Column 2 Trafficable quantity
	Grams
Fentanyl	0.005
Furethidine	1.0
Harmaline	2.0
Harmine	2.0
Heroin	2.0
Hydrocodone	2.0
Hydromorphinol	2.0
Hydromorphone	2.0
Hydroxyamphetamine	2.0
Hydroxypethidine	5.0
Ketobemidone	2.0
Levorphanol	1.0
Lysergamide	0.1
Lysergic acid	0.002
Lysergide	0.002
Mescaline	7.5
Metazocine	7.0
Methadone	2.0
Methaqualone	50.0
Methorphan	2.0
Methylamphetamine	2.0
3,4-Methylenedioxyamphetamine	0.5
Methyldesorphine	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
Phenomorphan	5.0
Phenoperidine	1.0
Pholcodine	5.0

SCHEDULE VI—continued

Column 1 Name of substance	Column 2 Trafficable quantity
	Grams
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

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.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Act 1901	6, 1901	3 Oct 1901	4 Oct 1901 (*see Gazette* 1901, p. 165)	
Spirits Act 1906	21, 1906	12 Oct 1906	1 Jan 1907 (*see Gazette* 1907)	—
Customs (Inter-State Accounts) Act 1910 (a)	9, 1910	7 Sept 1910	7 Sept 1910	—
Customs Act 1910	36, 1910	1 Dec 1910	1 Dec 1910	—
Customs Act 1914	19, 1914	7 Dec 1914	7 Dec 1914	—
Customs Act 1916	10, 1916	30 May 1916	30 May 1916	—
Customs Act 1920	41, 1920	10 Nov 1920	(*b*)	—
Customs Act 1922	19, 1922	9 Oct 1922	9 Oct 1922	—
Customs Act 1923	12, 1923	17 Aug 1923	17 Aug 1923	—
Customs Act 1925	22, 1925	26 Sept 1925	26 Sept 1925	—
Customs Act 1930	6, 1930	29 Mar 1930	29 Mar 1930	S. 3
Customs Act 1934	7, 1934	24 July 1934	S. 17: 1 Jan 1935 Remainder: Royal Assent	—
Statute Law Revision Act 1934	45, 1934	6 Aug 1934	6 Aug 1934	—
Customs Act 1935	7, 1935	5 Apr 1935	1 Jan 1935	—
Customs Act 1936	85, 1936	7 Dec 1936	7 Dec 1936	—
Customs Act 1947	54, 1947	13 Nov 1947	15 Nov 1947 (*see Gazette* 1947, p. 337)	—
Customs Act 1949	45, 1949	27 Oct 1949	1 Apr 1950 (*see Gazette* 1950, p. 723)	S. 3 (2)
Customs Act 1950	56, 1950	14 Dec 1950	30 Nov 1950	—
Statute Law Revision Act 1950	80, 1950	16 Dec 1950	31 Dec 1950	Ss. 16 and 17
Customs Act 1951	56, 1951	11 Dec 1951	11 Dec 1951	S. 7
Customs Act 1952	108, 1952	19 Nov 1952	Ss. 7 and 11: 14 Dec 1956 (*see Gazette* 1956, p. 3889) Remainder: Royal Assent	Ss. 19 (2) and 20 (2)
Customs Act 1953	47, 1953	26 Oct 1953	23 Nov 1953	—
Customs Act 1954	66, 1954	8 Nov 1954	6 Dec 1954	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Act 1957	37, 1957	7 June 1957	S. 4: 7 Sept 1957 Remainder: Royal Assent	Ss. 9 (2) and 11 (2)
Customs Act 1959	54, 1959	22 May 1959	Ss. 6-8 and 17: 1 Jan 1960 Ss. 3, 4, 9-11, 13, 15, 20-24 and 29: 1 Sept 1960 (*see Gazette* 1960, p. 3065) Remainder: Royal Assent	Ss. 5 (2) and 28-30
Customs Act 1960	42, 1960	5 Sept 1960	5 Sept 1960	—
Customs Act (No. 2) 1960	111, 1960	19 Dec 1960	S. 3: 30 Nov 1961 (*see Gazette* 1961, p. 4309) Remainder: Royal Assent	S. 2 (3)
Customs Act 1963	48, 1963	16 Oct 1963	Ss. 5, 20, 22, 31 and 32: 1 July 1964 (*see Gazette* 1964, p. 2348) Ss. 14 (1), 15 and 16: 1 Sept 1965 (*see Gazette* 1965, p. 3767) Remainder: Royal Assent	Ss. 8 (2), 12 (2),14 (2), 20 (2), 22 (2), 25 (2) and 29 (2)
Customs Act 1965	29, 1965	2 June 1965	1 July 1965	—
Customs Act (No. 2) 1965	82, 1965	30 Nov 1965	12 Apr 1966 (*see Gazette* 1966, p. 1963)	—
	as amended by			
	133, 1965	18 Dec 1965	14 Feb 1966	—
Customs Act (No. 3) 1965	133, 1965	18 Dec 1965	14 Feb 1966	—
Customs Act 1966	28, 1966	24 May 1966	S. 3: 16 June 1966 (*see Gazette* 1966, p. 3185) Remainder: Royal Assent	—
Customs Act 1967	54, 1967	30 May 1967	30 May 1967	S. 11
Customs Act 1968	14, 1968	16 May 1968	13 June 1968	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Act (No. 2) 1968	104, 1968	2 Dec 1968	Ss. 1, 2, 31 and 37: Royal Assent Ss. 29 and 30: 18 June 1968 Remainder: 1 Oct 1969 (*see Gazette* 1969, p. 5771)	S. 37
Customs Act 1971	12, 1971	5 Apr 1971	Ss. 1-3 and 5: Royal Assent S. 4: 1 July 1974 (*see Gazette* 1974, No. 53D)	S. 5
Customs Act (No. 2) 1971	134, 1971	16 Dec 1971	13 Jan 1972	—
Customs Act 1973	162, 1973	7 Dec 1973	7 Dec 1973	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9 (1) and 10
Customs Act 1974	28, 1974	1 Aug 1974	1 Aug 1974	—
Customs Act (No. 2) 1974	120, 1974	3 Dec 1974	3 Dec 1974	Ss. 3 (2), 4 (2), (3), 5 (2) and 6 (2)
Postal and Telecommunications Commissions (Transitional Provisions) Act 1975	56, 1975	12 June 1975	Ss. 4 and 38: 1 July 1975 (*see* s. 2 (1) and *Gazette* 1975, No. S122) Remainder: Royal Assent	—
as amended by *Customs Act (No. 2) 1975*	107, 1975	9 Oct 1975	(*c*)	S. 2
Customs Act 1975	77, 1975	20 June 1975	20 June 1975 (*see* s. 2)	—
Customs Act (No. 2) 1975	107, 1975	9 Oct 1975	(*c*)	S. 2
Customs Amendment Act 1976	41, 1976	2 June 1976	1 July 1976	S. 7
Administrative Changes (Consequential Provisions) Act 1976	91, 1976	20 Sept 1976	S. 3: (*d*)	S. 4
Customs Amendment Act (No. 2) 1976	174, 1976	13 Dec 1976	S. 4: 1 Feb 1977 (*see Gazette* 1977, No. S8) Remainder: Royal Assent	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Amendment Act 1977	154, 1977	10 Nov 1977	Ss. 3, 4 and 9: 20 Oct 1978 (see *Gazette* 1978, No. S195) S. 7: 24 Oct 1978 (*see Gazette* 1978, No. S219) Remainder: Royal Assent	Ss. 5 (2), 7 (2), (3) and 13
Administrative Changes (Consequential Provisions) Act 1978	36, 1978	12 June 1978	12 June 1978	S. 8
Customs Amendment Act 1978	183, 1978	4 Dec 1978	S. 3: 10 July 1978 Remainder: Royal Assent	Ss. 4 and 5
Jurisdiction of Courts (Miscellaneous Amendments) Act 1979	19, 1979	28 Mar 1979	Parts II-XVII (ss. 3-123): 15 May 1979 (*see Gazette* 1979, No. S86) Remainder: Royal Assent	S. 124
Customs Amendment Act 1979	92, 1979	14 Sept 1979	Ss. 5 and 6: (see Note 4) Remainder: Royal Assent	Ss. 4 (2), (3) and 17
as amended by				
Customs and Excise Legislation Amendment Act 1985	40, 1985	30 May 1985	Part III (ss. 27 and 28): 13 Sept 1979 (e)	—
Customs and Excise Legislation Amendment Act (No. 2) 1985	175, 1985	16 Dec 1985	Part III (ss. 14 and 15): (see Note 3)	—
Customs Amendment Act (No. 2) 1979	116, 1979	25 Oct 1979	1 June 1980 (see s. 2 and *Gazette* 1980, No. G21, p. 2)	—
Australian Federal Police (Consequential Amendments) Act 1979	155, 1979	28 Nov 1979	19 Oct 1979 (see s. 2 and *Gazette* 1979, No. S206)	—
Customs Amendment Act (No. 3) 1979	177, 1979	4 Dec 1979	1 Nov 1979	—
Customs Amendment Act (No. 4) 1979	180, 1979	4 Dec 1979	4 Dec 1979	S. 14

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Amendment Act (No. 2) 1980	13, 1980	8 Apr 1980	1 Feb 1981 (*see* s. 2 and *Gazette* 1980, No. S282)	Ss. 4 (2), 5 (2), (3) and 7
Customs Amendment Act 1980	15, 1980	15 Apr 1980	16 Apr 1980 (*see* s. 2)	—
Customs Amendment Act (No. 3) 1980	110, 1980	6 June 1980	Ss. 3 (b), 4 and 5: 1 July 1980 (*see Gazette* 1980, No. S146) Remainder: Royal Assent	Ss. 4 (2)-(4), 10 (2), 23 (2) and 32
Customs Amendment Act (No. 4) 1980	171, 1980	17 Dec 1980	1 Jan 1981	—
Customs Amendment (Tenders) Act 1981	45, 1981	14 May 1981	14 May 1981	—
Statute Law Revision Act 1981	61, 1981	12 June 1981	S. 115: Royal Assent (*f*)	—
Customs Amendment Act 1981	64, 1981	12 June 1981	Ss. 6-12, 15-18, 19 (2), 20-24 and 27: 21 Dec 1983 (*see Gazette* 1983, No. S332) Ss. 13 and 14: (*g*) Remainder: 10 July 1981	Ss. 28 (2), (3) and 38
as amended by				
Off-shore Installations (Miscellaneous Amendments) Act 1982	51, 1982	16 June 1982	(*see* 51, 1982 below)	(*see* 51, 1982 below)
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	(*see* 5, 1990 below)	(*see* 5, 1990 below)
Customs Amendment (Securities) Act 1981	67, 1981	12 June 1981	10 July 1981	S. 3 (2)
Customs (Unlawful Exportation of Food) Amendment Act 1981	152, 1981	26 Oct 1981	26 Oct 1981	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs (Valuations) Amendment Act 1981	157, 1981	27 Oct 1981	S. 4: 14 May 1981 Ss. 5, 8 and 11-13: 30 Nov 1981 (*see Gazette* 1981, No. S246) S. 9: 10 July 1981 Remainder: Royal Assent	Ss. 10 (2) and 13
Export Control (Miscellaneous Amendments) Act 1982	48, 1982	9 June 1982	1 Jan 1983 (*see* s. 2 and *Gazette* 1982, No. G48, p. 2)	—
Off-shore Installations (Miscellaneous Amendments) Act 1982	51, 1982	16 June 1982	Ss. 12, 13, 22 and Part III (ss. 26-28): 21 Dec 1983 (*see* s. 2 (2) and *Gazette* 1983, No. S332) Remainder: 14 July 1982	S. 25
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982	80, 1982	22 Sept 1982	Part LXXVII (s. 280): Royal Assent (*h*)	S. 280 (2) and (3)
Customs and Excise Amendment Act 1982	81, 1982	23 Sept 1982	Ss. 1-3 and 71: Royal Assent Ss. 4, 16-21, 23, 28, 29, 32-52, 55-65, 67, 68, 69 (4), 72 and 73: 26 Apr 1983 (*see Gazette* 1983, No. S80) Ss. 5, 7, 9, 10, 12, 14, 15, 25, 54, 66 and 70 (3): (*j*) Ss. 6, 8, 11, 13, 26, 27, 30, 31, 53, 70 (1) and (2): 22 Dec 1983 (*see Gazette* 1983, No. S333) Ss. 22, 24 and 74-76: 2 Dec 1985 (*see Gazette* 1985, No. S490) Remainder: 1 Apr 1985 (*see Gazette* 1985, No. S96)	Ss. 6 (2) and 71

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	S. 3: 22 Dec 1983 (*k*)	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	S. 3: (*l*)	S. 2 (24)
Customs and Excise Legislation Amendment Act 1985	40, 1985	30 May 1985	(*see* 40, 1985 below)	(*see* 40, 1985 below)
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	(*see* 5, 1990 below)	(*see* 5, 1990 below)
Diesel Fuel Taxes Legislation Amendment Act 1982	108, 1982	5 Nov 1982	(*m*)	S. 5 (2)
Customs Tariff (Miscellaneous Amendments) Act 1982	115, 1982	22 Nov 1982	Ss. 1, 2, 7 and 8 (1): Royal Assent Remainder: 1 Jan 1983 (*see* s. 2 and *Gazette* 1982, No. S274, p. 3)	S. 12
Customs Securities (Anti-Dumping) Amendment Act 1982	137, 1982	23 Dec 1982	24 Nov 1982	S. 4 (2)
Customs Amendment Act 1983	19, 1983	14 June 1983	Ss. 5 and 6: 1 July 1983 (*see Gazette* 1983, No. S136, p. 3) Remainder: Royal Assent	S. 2 (2) and (3)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	S. 3: (*n*)	S. 7 (1)
Customs and Excise Amendment Act 1983	101, 1983	23 Nov 1983	S. 4: (*p*) S. 5: 1 Jan 1983 Ss. 8 and 11: Royal Assent Ss. 10 and 12: 1 July 1983 (*see* s. 2 (5)) Remainder: (*p*)	S. 6 (2)

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs Tariff (Anti-Dumping) Miscellaneous Amendments Act 1984	2, 1984	14 Mar 1984	14 Mar 1984	—
Torres Strait Treaty (Miscellaneous Amendments) Act 1984	22, 1984	26 Apr 1984	15 Feb 1985 (*see* s. 2 and *Gazette* 1985, No. S38)	—
Public Service Reform Act 1984	63, 1984	25 June 1984	S. 151 (2): 1 July 1984 (*see Gazette* 1984, No. S245) (*q*)	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	S. 3: (*r*)	Ss. 2 (24) and 5 (2)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	S. 3: 22 Nov 1984 (*s*)	S. 6 (1)
Customs Administration (Transitional Provisions and Consequential Amendments) Act 1985	39, 1985	29 May 1985	10 June 1985 (*see* s. 2 and *Gazette* 1985, No. S194)	S. 4
Customs and Excise Legislation Amendment Act 1985	40, 1985	30 May 1985	Ss. 1, 2, 18-20, 21 (2) and 22: Royal Assent Ss. 4, 7-12, 34, 36 and 44: (*t*) S. 21 (1): 1 Jan 1983 Ss. 24 and 25: 16 Dec 1985 (*see* s. 2 (6)) Part III (ss. 27 and 28): 13 Sept 1979 (*see* s. 2 (7)) Ss. 29 and 31: 1 Apr 1985 S. 30: 2 Dec 1985 (*see* s. 2 (9)) S. 35: 29 Nov 1985 (*see Gazette* 1985, No. S490) S. 38: 1 July 1984 (*see* s. 2 (10)) Ss. 45 and 46: 23 July 1984 (*see* s. 2 (11)) Remainder: 27 June 1985	Ss. 2 (5) and 26

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by *Customs and Excise Legislation Amendment Act (No. 4) 1989*	5, 1990	17 Jan 1990	(*see* 5, 1990 below)	(*see* 5, 1990 below)
Customs and Excise Legislation Amendment Act (No. 2) 1985	175, 1985	16 Dec 1985	Ss. 3 and 8: Royal Assent (*u*) Ss. 4, 7 and 12: 1 May 1986 (*see Gazette* 1986, No. S182) (*u*) Ss. 5, 11 and 13: 13 Jan 1986 (*u*) S. 6: 2 Dec 1985 (*see Gazette* 1985, No. S490) (*u*) Ss. 9 and 10: (*u*)	Ss. 8 (2), 9 (2) and 10 (2)
Customs Administration (Transitional Provisions and Consequential Amendments) Act 1986	10, 1986	13 May 1986	13 May 1986	Ss. 2 (2) and 4
Customs and Excise Legislation Amendment Act 1986	34, 1986	3 June 1986	Ss. 7, 8 (1), 9, 11 and 12: Royal Assent (*v*) Ss. 8 (2), 10 and 13-15: 1 July 1987 (*see Gazette* 1987, No. S138) (*v*) Ss. 16-18: (*v*)	—
Customs and Excise Legislation Amendment Act (No. 2) 1986	149, 1986	11 Dec 1986	Ss. 5 and 16: 8 Jan 1987 S. 11: 21 Oct 1986 S. 12 (1): 1 Oct 1983 Remainder: Royal Assent	—
Customs (Valuation) Amendment Act 1987	51, 1987	5 June 1987	1 July 1987	S. 3
Customs Tariff (Miscellaneous Amendments) Act 1987	76, 1987	5 June 1987	1 Jan 1988 (*see* s. 2 and *Gazette* 1987, No. S351)	Ss. 4 and 8

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs and Excise Legislation Amendment Act 1987	81, 1987	5 June 1987	Ss. 1 and 2: Royal Assent Ss. 3 (1), 5 and 6: 1 July 1987 Ss. 4 and 7: 14 May 1987 Remainder: 1 Aug 1987 (*see Gazette* 1987, No. S135)	Ss. 3 and 11
Sea Installations (Miscellaneous Amendments) Act 1987	104, 1987	6 Nov 1987	Parts I-IV (ss. 1-30) and VII (s. 57): 15 Oct 1987 Remainder: 6 Nov 1987 (*see* s. 2 (2))	S. 21
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	S. 3: Royal Assent (*w*)	S. 5 (1)
Civil Aviation Act 1988	63, 1988	15 June 1988	Part III (ss. 17-32), s. 98, Parts IX and X (ss. 99-103): 1 July 1988 (*see Gazette* 1988, No. S189) Remainder: Royal Assent	—
Crimes Legislation Amendment Act (No. 2) 1988	66, 1988	15 June 1988	Ss. 4-11: 13 July 1988 Ss. 13-19: 1 Dec 1988 (*see Gazette* 1988, No. S366) S. 24: 15 June 1988 (*see* s. 2 (4)) Part VI (ss. 25-28): 1 Sept 1988 (*see* s. 2 (5) and *Gazette* 1988, No. S256) Remainder: Royal Assent	S. 6 (2) and (3)
Customs Legislation (Anti-Dumping Amendments) Act 1988	76, 1988	24 June 1988	1 Sept 1988 (*see* s. 2 and *Gazette* 1988, No. S217)	—
Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988	99, 1988	2 Dec 1988	2 Dec 1988	—
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	Part VIII (ss. 28 and 29): 11 Jan 1989 (*x*)	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Telecommunications Amendment Act 1988	121, 1988	14 Dec 1988	Ss. 5, 6, 10, 12, 13, 23 (2) and 26 (1): 1 Jan 1989 (see *Gazette* 1988, No. S402) Ss. 14, 23 (3) and 26 (2): 30 June 1989 (see *Gazette* 1989, No. S216) Remainder: Royal Assent	—
Customs and Excise Legislation Amendment Act 1989	23, 1989	5 May 1989	1 July 1989	S. 12
Customs and Excise Legislation Amendment Act (No. 2) 1989	24, 1989	5 May 1989	Ss. 4, 9, 10 and 34-38: 1 Feb 1989 S. 6: 8 July 1988 S. 8 (1) (a): 27 Aug 1987 S. 18: 15 Oct 1987 Ss. 19, 21, 23, 24, 29, 31 and 32: 1 July 1989 Part IV (ss. 44 and 45): 16 June 1982 (see s. 2 (7)) Remainder: Royal Assent	Ss. 5 (2), 8 (2) and 28 (2)
Customs and Excise Legislation Amendment Act (No. 3) 1989	78, 1989	21 June 1989	S. 5 (1) (c)-(g): 3 Mar 1989 Ss. 6, 8, 16 and 18: 19 July 1989 Remainder: Royal Assent	Ss. 5 (2), (3) and 7 (2)
Crimes Legislation Amendment Act 1989	108, 1989	30 June 1989	S. 10: 30 June 1990 Parts 5-7 (ss. 17-35): 28 July 1989 Part 8 (ss. 36-43): 1 July 1989 Remainder: Royal Assent	Ss. 21 (2), 22 (2), 23 (2) and 25 (2)
Customs Legislation (Anti-Dumping) Act 1989	174, 1989	21 Dec 1989	Ss. 1 and 2: Royal Assent Remainder: 21 Dec 1989 (see s. 2 (2) and *Gazette* 1989, No. S395)	—

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	Ss. 1-3 and 25: Royal Assent Ss. 4 (1) (b), 16, 26 (1) (b), (c) and 33 (in part): 1 July 1989 S. 15: 1 Aug 1989 Remainder: 1 Jan 1990	Ss. 4 (2), 17 (2), 24 and 34
Hazardous Waste (Regulation of Exports and Imports) Act 1989	6, 1990	17 Jan 1990	17 July 1990	—
Law and Justice Legislation Amendment Act 1989	11, 1990	17 Jan 1990	Parts 1 and 3 (ss. 1, 2, 6 and 7): Royal Assent Ss. 8-10: 17 July 1990 Ss. 12, 13, 15 (1) (b) and 51 (2): 17 Jan 1990 (see s. 2 (5)) Remainder: 14 Feb 1990	—
Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990	37, 1990	7 June 1990	Part 3 (ss. 7-10): (see Note 2)	—
Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990	70, 1990	16 June 1990	1 July 1990 (see *Gazette* 1990, No. S172)	S. 20 (2)-(7)

NOTES—continued
Table of Acts—continued

Y (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*, subsection 2 (7) of which provides as follows:

"(7) The amendments of each other Act specified in the Schedule made by this Act shall be deemed to have come into operation on 22 December 1975."

(e) The *Customs Amendment Act 1979* was amended by Part III (sections 27 and 28) only of the *Customs and Excise Legislation Amendment Act 1985*, subsection 2 (7) of which provides as follows:

"(7) Part III shall be deemed to have come into operation immediately before the commencement of section 3 of the *Customs Amendment Act 1979*."

(f) The *Customs Act 1901* was amended by section 115 only of the *Statute Law Revision Act 1981*, subsection 2 (1) of which provides as follows:

"(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent."

(g) Sections 13 and 14 of the *Customs Amendment Act 1981* were repealed by section 33 of the *Customs and Excise Legislation Amendment Act (No. 4) 1989* before a date was fixed before their commencement.

(h) The *Customs Act 1901* was amended by Part LXXVII (section 280) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2 (1) of which provides as follows:

"(1) Sections 1, 2, 166 and 195 and Parts III, VI, VII, XVI, XXXVI, XLIV, LI, LIII, LIV, LXI and LXXVII shall come into operation on the day on which this Act receives the Royal Assent."

(j) Sections 5, 7, 9, 10, 12, 14, 15, 25, 54 and 66 of the *Customs and Excise Amendment Act 1982* were repealed by section 33 of the *Customs and Excise Legislation Amendment Act (No. 4) 1989* before a date was fixed before their commencement.

Subsection 70 (3) and Schedule 2, Part III of the *Customs and Excise Amendment Act 1982* were repealed by section 3 of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984* before a date was fixed for their commencement.

(k) The *Customs and Excise Amendment Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, subsection 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;

* * * * * *"

NOTES—continued
Table of Acts—continued

(*l*) The *Customs and Excise Amendment Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsection 2 (10) of which provides as follows:

"(10) The amendments of the *Customs and Excise Amendment Act 1982* made by this Act shall be deemed to have come into operation on 23 September 1982."

(*m*) 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."

(*n*) The *Customs Act 1901* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, subsection 2 (4) of which provides as follows:

"(4) The amendments of the *Customs Act 1901* made by this Act shall:

(a) in the case of the amendments of section 131A of that Act—come into operation, or be deemed to have come into operation, as the case requires, on the commencement of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*;

(b) in the case of the amendment of subsection 273F (2) of that Act—come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent; and

(c) in the case of the other amendments of that Act—be deemed to have come into operation at the hour of 8 o'clock in the evening by standard time in the Australian Capital Territory on 17 August 1982."

The *Wildlife Protection (Regulation of Exports and Imports) Act 1982* came into operation on 1 May 1984 (*see Gazette* 1984, No. S137).

In pursuance of paragraph 2 (4) (b) the date of commencement was 18 July 1983.

(*p*) Subsections 2 (1) and (3) of the *Customs and Excise Amendment Act 1983* provide as follows:

"(1) Subject to this section, this Act shall be deemed to have come into operation at the hour of 8 o'clock in the evening by standard time in the Australian Capital Territory on 23 August 1983.

"(3) Section 4 shall come into operation immediately after the commencement of section 25 of the *Customs and Excise Amendment Act 1982*."

In pursuance of subsection 2 (3) section 25 was repealed by section 33 of the *Customs and Excise Legislation Amendment Act (No. 4) 1989* before a date was fixed for the commencement.

(*q*) The *Customs Act 1901* was amended by subsection 151 (2) only of the *Public Service Reform Act 1984*, subsection 2 (4) of which provides as follows:

"(4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation."

(*r*) The *Customs Act 1901* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsections 2 (1) and (7)-(9) of which provide as follows:

"(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

"(7) The amendments of the definition of 'Australian installation' in subsection 4 (1) and of paragraph 161A (3) (c) of the *Customs Act 1901* made by this Act shall be deemed to have come into operation on 1 January 1983.

"(8) If the twenty-eighth day after the day on which this Act receives the Royal Assent is an earlier day than the day on which section 22 of the *Customs and Excise Amendment Act 1982* comes into operation, the amendment of section 96A of the *Customs Act 1901* made by this Act shall come into operation on the last-mentioned day.

"(9) If the twenty-eighth day after the day on which this Act receives the Royal Assent is an earlier day than the day on which section 25 of the *Customs and Excise Amendment Act 1982* comes into operation, the amendments of sections 111, 111A and 111D of the *Customs Act 1901* made by this Act and the amendment of that Act inserting section 273GAB made by this Act shall come into operation on the last-mentioned day."

NOTES—continued
Table of Acts—continued

In pursuance of subsection 2 (8) the date of commencement was 2 December 1985 (*see Gazette* 1985, No. S490).

In pursuance of subsection 2 (9) section 25 was repealed by section 33 of the *Customs and Excise Legislation Amendment Act (No. 4) 1989* before a date was fixed for the commencement.

(*s*) The *Customs Act 1901* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2 (1) of which provides as follows:

"(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent."

(*t*) Subsections 2 (3) and (4) of the *Customs and Excise Legislation Amendment Act 1985* provides as follows:

"(3) Sections 4, 7, 9, 10, 11, 12, 34, 35, 36 and 44 shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

"(4) Section 8 shall come into operation on the day on which section 4 of the *Customs and Excise Amendment Act 1983* comes into operation." (see Note *(p)* above.)

In pursuance of subsection 2 (3) sections 4, 7, 9, 10, 11, 12, 34, 35, 36 and 44 were repealed by section 33 of the *Customs and Excise Legislation Amendment Act (No. 4) 1989* before a date was fixed for their commencement.

(*u*) The *Customs Act 1901* was amended by sections 3-13 only of the *Customs and Excise Legislation Amendment Act (No. 2) 1985*, subsections 2 (1)-(5) of which provide as follows:

"(1) Sections 1, 2, 3, 8 and 16 shall come into operation on the day on which this Act receives the Royal Assent.

"(2) Sections 4, 7, 12, 18 and 21 shall come into operation on a day to be fixed by Proclamation.

"(3) Sections 5, 11 and 13 shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

"(4) Section 6 shall come into operation on the day on which section 22 of the *Customs and Excise Amendment Act 1982* comes into operation.

"(5) Sections 9, 10, 19 and 20 shall be deemed to have come into operation on 1 November 1985."

(*v*) The *Customs Act 1901* was amended by sections 7-18 only of the *Customs and Excise Legislation Amendment Act 1986*, subsections 2 (1)-(3) of which provide as follows:

"(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

"(2) Subsection 8 (2) and sections 10, 13, 14 and 15 shall come into operation on the commencement of the *Protection of Movable Cultural Heritage Act 1986*.

"(3) Sections 16, 17 and 18 shall come into operation on 1 July 1986."

(*w*) The *Customs Act 1901* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2 (1) of which provides as follows:

"(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent."

(*x*) The *Customs Act 1901* was amended by Part VIII (sections 28 and 29) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2 (3) of which provides as follows:

"(3) Parts VIII, IX and XVI (except the provisions referred to in subsection (9)) commence on the twenty-eighth day after the day on which this Act receives the Royal Assent."

NOTES—continued

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3	am. No. 12, 1923; No. 108, 1952 rs. No. 54, 1959 am. No. 48, 1963; No. 29, 1965; No. 104, 1968 rep. No. 216, 1973
S. 4	am. No. 12, 1923; No. 7, 1935; No. 56, 1950; No. 108, 1952; No. 47, 1953; No. 37, 1957; No. 54, 1959; No. 48, 1963; No. 29, 1965; No. 82, 1965 (as am. by No. 133, 1965); No. 54, 1967; Nos. 14 and 104, 1968; No. 134, 1971; No. 216, 1973; Nos. 28 and 120, 1974; Nos. 91 and 174, 1976; No. 154, 1977; No. 92, 1979 (as am. by No. 40, 1985); Nos. 155 and 180, 1979; No. 110, 1980; Nos. 64 and 152, 1981; Nos. 48, 51, 80 and 115, 1982; Nos. 72 and 165, 1984; Nos. 39 and 175, 1985; No. 34, 1986; Nos. 81, 76 and 104, 1987; Nos. 23, 24 and 78, 1989; No. 5, 1990
S. 4A	ad. No. 5, 1990
S. 5	rs. No. 56, 1951 am. No. 216, 1973; No. 28, 1974; No. 81, 1982
S. 5A	ad. No. 51, 1982 am. No. 104, 1987
Ss. 5B, 5C	ad. No. 104, 1987
S. 6	rep. No. 28, 1974
S. 7	am. No. 28, 1974; No. 154, 1977; No. 51, 1982; No. 63, 1984 rs. No. 39, 1985
S. 8	am. No. 10, 1916 rs. No. 14, 1968 am. No. 51, 1982; No. 39, 1985; No. 34, 1986
S. 8A	ad. No. 12, 1923 rs. No. 14, 1968
S. 9	rs. No. 92, 1979; No. 24, 1989 am. No. 174, 1989
S. 10	rs. No. 92, 1979 rep. No. 39, 1985
S. 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; No. 10, 1986
S. 14	am. No. 12, 1923; No. 64, 1981
S. 15	am. No. 12, 1923; No. 108, 1952; No. 54, 1959 rs. No. 110, 1980 am. No. 10, 1986
S. 16	am. No. 12, 1923; No. 108, 1952 rep. No. 110, 1980
S. 17	am. No. 39, 1985
S. 18	rep. No. 110, 1980
S. 19	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 10, 1986

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
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 am. Nos. 39 and 175, 1985
S. 29	rep. No. 110, 1980
S. 30	am. No. 36, 1910; No. 104, 1968; No. 64, 1981; No. 34, 1986
S. 30A	ad. No. 22, 1984 am. No. 39, 1985; No. 10, 1986; No. 24, 1989
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. Nos. 51 and 81, 1982
S. 33A	ad. No. 51, 1982 am. No. 104, 1987
S. 33B	ad. No. 104, 1987
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 am. No. 5, 1990
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
S. 38A	ad. No. 81, 1982
S. 38B	ad. No. 81, 1982 am. No. 23, 1989
S. 39	am. No. 12, 1923; No. 7, 1934 rs. No. 64, 1981 am. No. 23, 1989
S. 40	am. No. 28, 1966; No. 54, 1967 rs. No. 64, 1981 am. No. 81, 1982
S. 40AA	ad. No. 104, 1968 am. No. 28, 1974; No. 64, 1981; 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. 40A	ad. No. 54, 1959 am. No. 28, 1974; No. 64, 1981 rep. No. 81, 1982
S. 40B	ad. No. 54, 1959 am. No. 28, 1966; No. 28, 1974 rs. No. 154, 1977 am. No. 64, 1981 rep. No. 81, 1982
S. 41	am. No. 12, 1923 rep. No. 104, 1968
S. 42	am. No. 108, 1952; No. 37, 1957; No. 28, 1974; Nos. 45, 64, 67 and 157, 1981; No. 137, 1982; No. 76, 1988; No. 174, 1989
S. 43	am. No. 108, 1952 rs. No. 37, 1957
S. 45	am. No. 77, 1975; Nos. 64 and 67, 1981; No. 76, 1988
S. 48	am. No. 12, 1923
Heading to Div. 1A of Part IV	ad. No. 54, 1959
S. 49	am. No. 12, 1923
S. 49A	ad. No. 110, 1980 am. No. 51, 1982; No. 104, 1987
S. 49B	ad. No. 104, 1987
Div. 1 of Part IV (ss. 50-57)	rep. No. 108, 1952
Div. 1 of Part IV (ss. 50, 51)	ad. No. 108, 1952
S. 50	rs. No. 108, 1952 am. No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 134, 1971; No. 28, 1974; No. 154, 1977; No. 110, 1980; No. 81, 1982; No. 24, 1989
S. 51	am. No. 12, 1923 rs. No. 108, 1952 am. No. 110, 1980
S. 52	am. No. 7, 1934 rep. No. 108, 1952
Ss. 53-56	rep. No. 108, 1952
S. 57	am. No. 12, 1923; No. 7, 1934 rep. No. 108, 1952
Heading to Div. 2 of Part IV	am. No. 12, 1923
S. 58	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 51, 1982; No. 104, 1987
S. 58A	ad. No. 104, 1987

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 59	am. No. 12, 1923; No. 7, 1934; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 28, 1974; No. 154, 1977 rs. No. 64, 1981 (as am. by No. 51, 1982) am. No. 81, 1982 (as am. by No. 40, 1985); No. 40, 1985; No. 104, 1987; No. 63, 1988
S. 60	am. No. 12, 1923; No. 108, 1952; No. 37, 1957; No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 64, 1981; Nos. 51 and 81, 1982
S. 61	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981 rs. No. 51, 1982 am. No. 104, 1987
S. 62	am. No. 12, 1923; No. 108, 1952 rs. No. 54, 1959 am. No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 28, 1974; No. 64, 1981; No. 81, 1982
S. 63	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
S. 64	rs. No. 12, 1923 am. No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 51, 1982
S. 64A	ad. No. 51, 1982
S. 65	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 28, 1974; No. 64, 1981; No. 81, 1982
Ss. 66, 67	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
S. 68	rs. No. 54, 1959 am. No. 104, 1968 rs. No. 81, 1982
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 am. No. 81, 1982
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 am. No. 72, 1984
S. 73	am. No. 12, 1923; No. 7, 1934; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982 rs. No. 40, 1985
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

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
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 am. No. 5, 1990
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; No. 10, 1986
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; No. 72, 1984; No. 10, 1986
S. 87	rs. No. 110, 1980 am. No. 81, 1982; No. 72, 1984
S. 88	rep. No. 104, 1968 ad. No. 110, 1980
S. 89	rs. No. 110, 1980
S. 90	rep. No. 21, 1906 ad. No. 110, 1980 am. No. 81, 1982; No. 72, 1984
S. 91	rep. No. 21, 1906 ad. No. 110, 1980
S. 92	am. No. 66, 1954; No. 28, 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

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 96	am. No. 104, 1968 rs. No. 110, 1980
S. 96A	ad. No. 81, 1982 am. No. 72, 1984; No. 175, 1985
S. 96B	ad. No. 175, 1985
S. 97	rs. No. 108, 1952 am. No. 28, 1974 rs. No. 110, 1980 am. No. 81, 1982; No. 72, 1984
S. 98	rs. No. 110, 1980 am. No. 5, 1990
S. 99	am. No. 104, 1968 rs. No. 110, 1980; No. 81, 1982
Ss. 100-102	rs. No. 110, 1980 am. No. 81, 1982
Part VA (ss. 103-105)	ad. No. 5, 1990
S. 103	am. No. 28, 1966; No. 54, 1967 rep. No. 110, 1980 ad. No. 5, 1990
S. 104	rs. No. 54, 1959 am. No. 28, 1974 rep. No. 110, 1980 ad. No. 5, 1990
S. 105	rs. No. 54, 1959 rep. No. 110, 1980 ad. No. 5, 1990
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; No 24, 1989
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; No. 81, 1982
S. 114	am. No. 12, 1923 rs. No. 54, 1959; No. 104, 1968 am. No. 107, 1975 rs. No. 154, 1977 am. No. 81, 1982; No. 149, 1986
S. 114A	ad. No. 12, 1923 am. No. 28, 1966; No. 54, 1967; No. 28, 1974 rs. No. 154, 1977 am. No. 81, 1982; No. 39, 1985

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 115	am. No. 12, 1923; No. 108, 1952; No. 54, 1959; No. 28, 1966; No. 54, 1967 rep. No. 104, 1968 ad. No. 154, 1977 am. No. 64, 1981; No. 81, 1982
S. 116	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
S. 117	rs. No. 81, 1982
S. 118	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; Nos. 51 and 81, 1982
S. 119	rs. No. 12, 1923 am. No. 48, 1963; No. 28, 1974; No. 154, 1977; No. 64, 1981; No. 10, 1986
S. 120	am. No. 12, 1923 rs. No. 54, 1959 am. No. 28, 1966; No. 54, 1967; No. 104, 1968; No. 28, 1974; No. 64, 1981; No. 81, 1982
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; No. 81, 1982
S. 125	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
Ss. 126A, 126B	ad. No. 104, 1987
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; No. 149, 1986

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
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; No. 39, 1983
S. 131B	ad. No. 81, 1987
S. 132	rs. No. 48, 1963 am. No. 28, 1974; No. 81, 1982 (as am. by No. 39, 1983)
S. 132A	ad. No. 104, 1968
S. 132B	ad. No. 28, 1974 am. No. 64, 1981; No. 81, 1982; No. 10, 1986
Ss. 132C, 132D	ad. No. 28, 1974 am. No. 10, 1986
S. 132E	ad. No. 28, 1974 rep. No. 61, 1981
S. 133	am. No. 107, 1975; No. 177, 1979; No. 15, 1980; No. 72, 1984
S. 136	am. No. 24, 1989
S. 137	am. No. 54, 1947 rep. No. 12, 1971 ad. No. 24, 1989
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; No. 175, 1985; Nos. 10 and 149, 1986 rs. No. 76, 1987 am. No. 24, 1989; No. 70, 1990
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

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
	rs. No. 115, 1982 rep. No. 76, 1987
S. 151B	ad. No. 85, 1936 am. No. 111, 1960 rep. No. 29, 1965
S. 152	am. No. 56, 1950; No. 107, 1975; No. 15, 1980
Div. 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
Div. 2 of Part VIII (ss. 154-161, 161A-161D)	rep. No. 23, 1989
Div. 2 of Part VIII (ss. 154-161, 161A-161L)	ad. No. 23, 1989
S. 153A	ad. No. 56, 1950 rs. No. 29, 1965 am. No. 133, 1965 rep. No. 41, 1976
S. 154	rs. No. 19, 1922 am. No. 54, 1947; No. 29, 1965; No. 120, 1974 rs. No. 41, 1976 am. No. 183, 1978 rs. No. 157, 1981 am. No. 2, 1984; No. 51, 1987 rs. No. 23, 1989
S. 155	rs. No. 19, 1922 rep. No. 54, 1959 ad. No. 29, 1965 rep. No. 41, 1976 ad. No. 157, 1981 rs. No. 23, 1989
S. 156	rs. No. 19, 1922 rep. No. 54, 1959 ad. No. 157, 1981 am. No. 115, 1982; No. 76, 1987 rs. No. 23, 1989
S. 157	rs. No. 54, 1947 am. No. 28, 1974 rs. No. 157, 1981 am. No. 72, 1984 rs. No. 23, 1989
S. 158	rep. No. 41, 1976 ad. No. 157, 1981 am. No. 72, 1984; No. 51, 1987 rs. No. 23, 1989
S. 159	am. No. 28, 1966; No. 54, 1967 rep. No. 41, 1976 ad. No. 157, 1981 am. No. 101, 1983; Nos. 51 and 76, 1987 rs. No. 23, 1989

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 160	am. No. 29, 1965 rep. No. 41, 1976 ad. No. 157, 1981 rs. No. 23, 1989
S. 161	am. No. 133, 1965; No. 216, 1973 rep. No. 41, 1976 ad. No. 157, 1981 am. No. 51, 1987 rs. No. 23, 1989
S. 161A	ad. No. 157, 1981 am. No. 72, 1984; Nos. 51 and 76, 1987 rs. No. 23, 1989
S. 161B	ad. No. 157, 1981 am. No. 10, 1986 rs. No. 23, 1989
S. 161C	ad. No. 157, 1981 rs. No. 23, 1989
S. 161D	ad. No. 157, 1981 am. No. 51, 1987 rs. No. 23, 1989
Ss. 161E-161L	ad. No. 23, 1989
Heading to Div. 3 of Part VIII	am. No. 108, 1982
S. 162	am. No. 7, 1934; No. 56, 1950 rs. No. 108, 1952 am. No. 28, 1974; No. 64, 1981; No. 39, 1985; No. 34, 1986
S. 162A	ad. No. 48, 1963 am. No. 14, 1968; No. 28, 1974; No. 64, 1981; No. 81, 1982; No. 39, 1985; No. 34, 1986
S. 162B	ad. No. 104, 1968 am. No. 28, 1974; No. 81, 1982; No. 23, 1989
S. 163	am. No. 6, 1930; No. 7, 1934; No. 108, 1952; No. 47, 1953; No. 104, 1968 rs. No. 12, 1971 am. No. 165, 1984; No. 81, 1987
S. 164	rep. No. 12, 1971 ad. No. 108, 1982 am. Nos. 39 and 101, 1983; No. 175, 1985; No. 81, 1987; No. 99, 1988; Nos. 24 and 78, 1989; No. 5, 1990
S. 164A	ad. No. 45, 1949 rep. No. 12, 1971 ad. No. 40, 1985 rep. No. 175, 1985 ad. No. 81, 1987
S. 164AA	ad. No. 81, 1987 am. No. 78, 1989
S. 164B	ad. No. 56, 1950 am. No. 10, 1986
S. 165	am. No. 104, 1968; Nos. 81 and 108, 1982; No. 78, 1989

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 165A	ad. No. 78, 1989
S. 167	rs. No. 36, 1910 am. No. 12, 1923; No. 48, 1963; No. 28, 1974; No. 64, 1981; No. 78, 1989
S. 168	rs. No. 108, 1952; No. 104, 1968
S. 169	rep. No. 12, 1923
S. 170	am. No. 108, 1952 rep. No. 54, 1959
Ss. 171-174	rep. No. 54, 1959
S. 175	am. No. 12, 1923; No. 108, 1952 rs. No. 81, 1982 am. No. 72, 1984
S. 176	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981 rep. No. 81, 1982
S. 177	am. No. 12, 1923 rep. No. 81, 1982
Ss. 178, 179	rep. No. 81, 1982
Div. 1 of Part XI (s. 179A)	ad. No. 54, 1959 rep. No. 110, 1980
Div. 1 of Part XI (s. 180)	ad. No. 110, 1980
S. 179A	ad. No. 54, 1959 am. No. 28, 1974 rep. No. 110, 1980
S. 180	rs. No. 110, 1980 am. No. 81, 1982; No. 24, 1989
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
S. 181	rs. No. 110, 1980 am. No. 81, 1982; No. 10, 1986
Ss. 182, 183, 183A	rs. No. 110, 1980 am. No. 81, 1982
Div. 3 of Part XI (ss. 183A-183C)	ad. No. 54, 1959 rep. No. 110, 1980
Div. 3 of Part XI (ss. 183B, 183C, 183CA-183CP)	ad. No. 110, 1980
S. 183A	ad. No. 54, 1959 am. No. 28, 1974 rep. No. 110, 1980

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
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; No. 10, 1986
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; No. 10, 1986; No. 24, 1989
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; No. 10, 1986; No. 24, 1989
S. 183CR	ad. No. 110, 1980 am. No. 72, 1984; No. 10, 1986; No. 24, 1989
S. 183CS	ad. No. 110, 1980 am. No. 81, 1982; No. 72, 1984; No. 10, 1986
S. 183CT	ad. No. 110, 1980 am. No. 81, 1982
S. 183CU	ad. No. 110, 1980
Heading to Div. 4 of Part XI	rep. No. 110, 1980
Heading to Div. 5 of Part XI	ad. No. 110, 1980
Div. 5 (formerly Div. 4) of Part XI	ad. No. 54, 1959
S. 183D	ad. No. 54, 1959 am. No. 216, 1973; No. 28, 1974 rs. No. 110, 1980 am. No. 10, 1986; No. 24, 1989
S. 183DA	ad. No. 110, 1980 am. Nos. 80 and 81, 1982; No. 10, 1986
S. 183DB	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. 183DC	ad. No. 110, 1980 am. No. 81, 1982; No. 10, 1986
S. 183DD	ad. No. 110, 1980 am. Nos. 80 and 81, 1982; No. 10, 1986
S. 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
S. 183S	ad. No. 54, 1959 am. No. 110, 1980; No. 10, 1986
Ss. 183T, 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) am. No. 81, 1982
S. 185	am. No. 12, 1923; No. 7, 1934; No. 108, 1952; No. 28, 1966; No. 54, 1967 rs. No. 64, 1981 (as am. by No. 51, 1982)
S. 187	am. No. 12, 1923; No. 64, 1981 rs. No. 51, 1982 am. No. 104, 1987; No. 24, 1989
S. 188	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981; Nos. 51 and 81, 1982
S. 189	am. No. 12, 1923; No. 64, 1981; No. 51, 1982
S. 190	am. No. 110, 1980
S. 191	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981; Nos. 51 and 81, 1982
S. 192	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
S. 194	am. No. 64, 1981

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 195	am. No. 36, 1910; No. 12, 1923 rs. No. 110, 1980 am. No. 51, 1982; No. 104, 1987
S. 196	am. No. 36, 1910; No. 61, 1981; No. 175, 1985
S. 196C	ad. No. 64, 1981
S. 197	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
S. 197A	ad. No. 111, 1960 am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
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; No. 81, 1982
S. 203	am. No. 12, 1923 rs. No. 64, 1981
S. 203A	ad. No. 34, 1986
S. 204	rs. No. 110, 1980; No. 64, 1981 am. No. 34, 1986
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; No. 24, 1989
S. 210	rs. No. 36, 1910 am. No. 54, 1959; No. 28, 1966; No. 54, 1967; No. 92, 1979; No. 64, 1981; No. 81, 1982
S. 211	rep. No. 54, 1959
S. 214	am. No. 12, 1923; No. 56, 1950; No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 14, 1968; No. 28, 1974; No. 64, 1981
Ss. 214AA, 214AB	ad. No. 23, 1989 am. No. 5, 1990

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 214AC	ad. No. 23, 1989
S. 214A	ad. No. 108, 1982 am. No. 39, 1983; No. 2, 1984; No. 5, 1990
S. 214B	ad. No. 2, 1984 am. No. 5, 1990
S. 216	am. No. 64, 1981 rep. No. 81, 1982
S. 218	rs. No. 12, 1923
Div. 1A of Part XII (ss. 219A-219K)	ad. No. 92, 1979
S. 219A	ad. No. 92, 1979 am. No. 180, 1979; No. 66, 1988; No. 11, 1990
Ss. 219AA, 219AB	ad. No. 11, 1990
S. 219B	ad. No. 92, 1979 am. Nos. 116 and 180, 1979; Nos. 66 and 121, 1988; No. 11, 1990
S. 219C	ad. No. 92, 1979 am. No. 81, 1982
S. 219D	ad. No. 92, 1979 am. No. 180, 1979 rs. No. 66, 1988
S. 219E	ad. No. 92, 1979 am. No. 180, 1979; No. 66, 1988
S. 219F	ad. No. 92, 1979 am. Nos. 116 and 180, 1979; No. 66, 1988; No. 11, 1990
S. 219G	ad. No. 92, 1979 am. No. 180, 1979; No. 81, 1982; No. 66, 1988; No. 11, 1990
S. 219H	ad. No. 92, 1979 am. No. 180, 1979; No. 66, 1988
S. 219J	ad. No. 92, 1979 rep. No. 180, 1979
S. 219K	ad. No. 92, 1979 am. No. 180, 1979; No. 66, 1988
S. 220	am. No. 12, 1923
S. 221	am. No. 216, 1973; No. 19, 1979
S. 225	am. No. 64, 1981
S. 226	am. No. 7, 1934; No. 42, 1960; No. 48, 1963; No. 28, 1974; No. 64, 1981
S. 227	am. No. 216, 1973; No. 19, 1979
S. 228	am. No. 36, 1910 rs. No. 12, 1923 am. No. 7, 1934; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 216, 1973; No. 64, 1981; No. 51, 1982; No. 24, 1989
S. 228A	ad. No. 51, 1982 am. No. 104, 1987
S. 228B	ad. No. 104, 1987

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 229	am. No. 21, 1906; No. 12, 1923; No. 7, 1934; No. 56, 1950; No. 108, 1952; No. 104, 1968; No. 216, 1973; No. 110, 1980; No. 64, 1981; No. 34, 1986; No. 24, 1989; Nos. 5 and 6, 1990
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
S. 233B	ad. No. 36, 1910
	am. No. 12, 1923; No. 54, 1967; No. 134, 1971; No. 28, 1974; No. 92, 1979; No. 64, 1981; No. 149, 1986
S. 233BA	ad. No. 24, 1989
S. 234	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 154, 1977; No. 64, 1981; No. 81, 1982; No. 24, 1989
S. 234AA	ad. No. 110, 1980
	am. No. 40, 1985
S. 234A	ad. No. 108, 1952
	am. No. 37, 1957; No. 28, 1966; No. 54, 1967; No. 110, 1980; No. 64, 1981; No. 81, 1982; No. 40, 1985
S. 234AB	ad. No. 40, 1985
S. 235	rep. No. 48, 1963
	ad. No. 54, 1967
	am. No. 134, 1971; No. 28, 1974
	rs. No. 154, 1977
	am. No. 92, 1979; No. 81, 1982; No. 165, 1984
S. 238	am. No. 28, 1966; No. 54, 1967; No. 61, 1981
	rep. No. 81, 1982
S. 240	am. No. 64, 1981
	rep. No. 81, 1982
	ad. No. 23, 1989
S. 241	rep. No. 81, 1982
S. 242	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. 243	am. No. 133, 1965; No. 28, 1974 rep. No. 81, 1982
Div. 3 of Part XIII (ss. 243A-243S)	ad. No. 92, 1979
S. 243A	ad. No. 92, 1979 am. No. 180, 1979; No. 13, 1980; No. 64, 1981; No. 80, 1982; No. 108, 1989
S. 243AB	ad. No. 108, 1989
S. 243B	ad. No. 92, 1979 am. No. 64, 1981; No. 108, 1989
S. 243C	ad. No. 92, 1979 am. No. 180, 1979; No. 108, 1989
S. 243CA	ad. No. 108, 1989
S. 243D	ad. No. 92, 1979
S. 243E	ad. No. 92, 1979 am. No. 180, 1979; No. 13, 1980; No. 64, 1981; No. 81, 1982; No. 108, 1989
S. 243F	ad. No. 92, 1979 am. No. 13, 1980; No. 64, 1981; No. 81, 1982; No. 120, 1988; No. 108, 1989
S. 243G	ad. No. 92, 1979 am. No. 13, 1980; No. 64, 1981 rs. No. 108, 1989
Ss. 243H, 243J	ad. No. 92, 1979 am. No. 13, 1980; No. 108, 1989
S. 243K	ad. No. 92, 1979 am. No. 13, 1980 rs. No. 108, 1989
S. 243L	ad. No. 92, 1979 am. No. 13, 1980; No. 64, 1981; No. 108, 1989
S. 243M	ad. No. 92, 1979 rs. No. 13, 1980 am. No. 108, 1989
S. 243N	ad. No. 92, 1979 am. No. 13, 1980; No. 108, 1989
Ss. 243NA, 243NB	ad. No. 141, 1987
Ss. 243P, 243Q	ad. No. 92, 1979 am. No. 13, 1980 rs. No. 108, 1989
Ss. 243R, 243S	ad. No. 92, 1979
Div. 4 of Part XIII (ss. 243T-243V)	ad. No. 24, 1989
S. 243T	ad. No. 24, 1989
S. 243U	ad. No. 24, 1989 am. No. 5, 1990
S. 243V	ad. No. 24, 1989
S. 244	am. No. 108, 1952; No. 92, 1979

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 245	am. No. 28, 1966; No. 216, 1973; No. 19, 1979; No. 64, 1981 rs. No. 81, 1982 am. No. 24, 1989; No. 5, 1990
S. 245A	ad. No. 36, 1910 am. No. 149, 1986 rep. No. 24, 1989
S. 246	am. No. 28, 1966; No. 216, 1973; No. 19, 1979; No. 64, 1981 rep. No. 81, 1982
S. 247	am. No. 216, 1973; No. 19, 1979; No. 81, 1982
S. 248	am. No. 12, 1923; No. 19, 1979
S. 249	am. No. 64, 1981
S. 250	am. No. 81, 1982
S. 250A	ad. No. 36, 1910
S. 251	am. No. 81, 1982
S. 253	am. No. 10, 1986
S. 255	rs. No. 12, 1923
S. 256	am. No. 14, 1968
S. 257	rep. No. 81, 1982 ad. No. 40, 1985
S. 258	rep. No. 37, 1957
S. 258A	ad. No. 7, 1934 rep. No. 37, 1957
S. 260	rep. No. 37, 1957
S. 263	rs. No. 48, 1963 am. No. 216, 1973; No. 28, 1974
S. 264	am. No. 64, 1981; No. 81, 1982; No. 10, 1986
Heading to Part XV	rs. No. 40, 1985
Part XV (ss. 265-268, 268A, 269)	rep. No. 110, 1980
Part XV (ss. 265-269, 269A)	ad. No. 45, 1981
S. 265	am. No. 36, 1910 rep. No. 110, 1980 ad. No. 45, 1981 am. No. 19, 1983; No. 40, 1985
S. 266	rep. No. 110, 1980 ad. No. 45, 1981 am. No. 157, 1981; No. 40, 1985
S. 267	rep. No. 110, 1980 ad. No. 45, 1981 am. No. 76, 1987; No. 24, 1989
S. 268	am. No. 28, 1966; No. 54, 1967 rep. No. 110, 1980 ad. No. 45, 1981 am. Nos. 39 and 40, 1985

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 268A	ad. No. 48, 1963 am. No. 28, 1966 rep. No. 110, 1980
S. 269	rep. No. 110, 1980 ad. No. 45, 1981 am. No. 39, 1985
S. 269A	ad. No. 45, 1981
Part XVA (ss. 269B-269S)	ad. No. 19, 1983
S. 269B	ad. No. 19, 1983 am. No. 39, 1985; No. 34, 1986; No. 76, 1987
S. 269C	ad. No. 19, 1983 am. No. 39, 1985; No. 34, 1986
S. 269D	ad. No. 19, 1983 am. No. 39, 1985; No. 76, 1987
S. 269E	ad. No. 19, 1983 am. No. 39, 1985; No. 34, 1986; No. 5, 1990
Ss. 269F, 269G	ad. No. 19, 1983 am. No. 39, 1985
S. 269H	ad. No. 39, 1985
S. 269J	ad. No. 19, 1983 am. No. 39, 1985; No. 149, 1986
Ss. 269K, 269L	ad. No. 19, 1983 am. No. 39, 1985
S. 269M	ad. No. 19, 1983
S. 269N	ad. No. 19, 1983 am. No. 39, 1985; No. 5, 1990
S. 269P	ad. No. 19, 1983 am. Nos. 39 and 40, 1985; No. 10, 1986; No. 5, 1990
S. 269Q	ad. No. 19, 1983
S. 269R	ad. No. 19, 1983 am. No. 39, 1985
S. 269S	ad. No. 19, 1983 am. No. 39, 1985; No. 99, 1988
Part XVB (ss. 269T-269V)	ad. No. 2, 1984
Heading to Div. 1 of Part XVB	ad. No. 174, 1989
S. 269T	ad. No. 2, 1984 rs. No. 76, 1988 am. No. 174, 1989; No. 5, 1990
S. 269TAAA	ad. No. 70, 1990
Ss. 269TAA-269TAJ	ad. No. 174, 1989
S. 269TA	ad. No. 76, 1988
Heading to Div. 2 of Part XVB	ad. No. 174, 1989

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 269TB	ad. No. 76, 1988
S. 269TC	ad. No. 76, 1988 am. No. 174, 1989
Ss. 269TD-269TF	ad. No. 76, 1988
Heading to Div. 3 of Part XVB	ad. No. 174, 1989
Ss. 269TG-269TP	ad. No. 174, 1989
S. 269U	ad. No. 2, 1984 am. No. 39, 1985; No. 76, 1988; No. 174, 1989
S. 269V	ad. No. 2, 1984 rep. No. 76, 1988
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; Nos. 48 and 81, 1982; No. 175, 1985; No. 24, 1989
S. 271	rep. No. 12, 1923 ad. No. 108, 1952 rs. No. 47, 1953 am. No. 29, 1965; No. 39, 1985
Ss. 272, 273	rep. No. 9, 1910 ad. No. 47, 1953 am. No. 29, 1965; No. 39, 1985
S. 273A	ad. No. 47, 1953 am. No. 39, 1985
Ss. 273B-273D	ad. No. 47, 1953
S. 273E	ad. No. 47, 1953 rep. No. 29, 1965
S. 273EA	ad. No. 42, 1960 am. No. 48, 1963; No. 28, 1974; No. 64, 1981
S. 273F	ad. No. 47, 1953 am. No. 29, 1965; No. 39, 1983; No. 76, 1987
S. 273G	ad. No. 92, 1979
S. 273GAA	ad. No. 72, 1984
S. 273GA	ad. No. 110, 1980 am. No. 157, 1981; Nos. 81 and 108, 1982; No. 19, 1983; No. 72, 1984; Nos. 39 and 175, 1985; No. 10, 1986; No. 81, 1987; No. 104, 1987; Nos. 23, 24 and 78, 1989
S. 273H	ad. No. 110, 1980 rs. No. 115, 1982 am. No. 72, 1984; No. 10, 1986; No. 76, 1987
S. 273J	ad. No. 72, 1984
S. 273JA	ad. No. 40, 1985
S. 273K	ad. No. 72, 1984 am. No. 40, 1985
S. 274	am. No. 12, 1923; No. 56, 1950; No. 14, 1968; No. 10, 1986; No. 5, 1990

NOTES—continued
Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 275	am. No. 12, 1923; No. 56, 1950; No. 110, 1980; No. 5, 1990
S. 275A	ad. No. 48, 1963 am. No. 28, 1966; No. 14, 1968; No. 28, 1974; No. 64, 1981; No. 81, 1982
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 4, 58B and 131AA are amended by Part 3 (sections 7-10) only of the *Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990*, section 2 of which provides as follows:

   "2. This Act commences on the day on which the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990* commences."

   As at 31 July 1990 no date had been fixed and the amendments are not incorporated in this reprint. They are set out below under the heading "EXTRACT FROM PETROLEUM (AUSTRALIA-INDONESIA ZONE OF COOPERATION) (CONSEQUENTIAL PROVISIONS) ACT 1990."

3. S. 196—The *Customs Amendment Act 1979* was amended by Part III (sections 14 and 15) only of the *Customs and Excise Legislation Amendment Act (No. 2) 1985*, subsection 2 (6) of which provides as follows:

   "(6) Part III shall come into operation on the day on which section 5 of the *Customs Amendment Act 1979* comes into operation."

   As at 31 July 1990 no date had been fixed and the amendments are not incorporated in this reprint. (*See* Note 4.)

4. 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:

   "5. [NOTE] 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' ;

NOTES—continued

(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 subsection (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, subsection (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 subsection (4) is *prima facie* evidence of the matters stated in the certificate.

'(6) For the purposes of subsection (5), a document purporting to be a certificate under subsection (4) and to be signed by a medical practitioner shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

'(7) Where a medical practitioner furnishes to an officer of Customs or of police a certificate, signed by him, setting out the results of an examination carried out by him of the body cavities of a person, the officer of Customs or of police shall cause a copy of the certificate to be furnished to the person as soon as practicable after the certificate is furnished to him.

'(8) In this section, **"medical practitioner"** means any person, whether male or female, registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.' ."

Subsection 2 (2) of the *Customs Amendment Act 1979* provides as follows:

"(2) Sections 5 and 6 shall come into operation on a date to be fixed by Proclamation."

As at 31 July 1990 no date had been fixed and the amendments are not incorporated in this reprint.

NOTE—The *Customs Amendment Act 1979* was amended by Part III (sections 14 and 15) only of the *Customs and Excise Legislation Amendment Act (No. 2) 1985*. Section 15 of that Act provides as follows:

"15. Section 5 of the Principal Act is amended:

(a) by omitting paragraph (b); and

(b) by omitting from paragraph (d) 'and third' ."

NOTES—continued

EXTRACT FROM PETROLEUM (AUSTRALIA-INDONESIA ZONE OF COOPERATION) (CONSEQUENTIAL PROVISIONS) ACT 1990

Interpretation

8. Section 4 of the Principal Act is amended:

(a) by omitting "adjacent to Australia" from the definition of "Australian seabed" in subsection (1) and substituting "adjacent to Australia (other than the seabed within Area A of the Zone of Cooperation)" ;

(b) by inserting in subsection (1) the following definitions:

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

'Indonesia' means the Republic of Indonesia;

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

(c) by inserting after subsection (9) the following subsection:

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

9. After section 58A of the Principal Act the following section is inserted:

Direct journeys between certain resources installations and external places prohibited

"58B. (1) In this section:

'external place' does not include Indonesia.

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

(a) that person; and

(b) the owner of the installation; and

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

are each guilty of an offence against this section.

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

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

(b) the owner of the installation; and

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

are each guilty of an offence against this section.

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

(a) that person; and

(b) the owner of the installation; and

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

are each guilty of an offence against this section.

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

(a) the person who sends the goods; and

(b) the owner of the installation; and

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

NOTES—continued

EXTRACT FROM PETROLEUM (AUSTRALIA-INDONESIA ZONE OF COOPERATION) (CONSEQUENTIAL PROVISIONS) ACT 1990—continued

are each guilty of an offence against this section.

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

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

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

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

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

"(8) For the purposes of this section:

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

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

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

10. After section 131A of the Principal Act the following section is inserted:

Special provisions for goods taken to Area A of the Zone of Cooperation

"131AA. (1) Goods taken out of Australia for the purpose of being taken to a resources installation in Area A and there used for a purpose related to petroleum operations are not liable to any duty of Customs in relation to the taking of the goods out of Australia.

"(2) Goods brought into Australia for the purpose of being taken to a resources installation in Area A and there used for a purpose related to petroleum operations are not liable to any duty of Customs in relation to the bringing of the goods into Australia.

"(3) In this section, **'petroleum operations'** has the same meaning as in the Treaty set out in the Schedule to the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990*." .

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